

## Chapter–XI

# Refunds

---

- 54. Refund of tax
- 55. Refund in certain cases
- 56. Interest on delayed refunds
- 57. Consumer Welfare Fund
- 58. Utilisation of Fund

### Statutory provision

#### 54. Refund of tax

- (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from relevant date in such form and manner as may be prescribed:

*Provided that a registered taxable person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions as per sub-section (6) of section 49 may claim such refund in return furnished under section 39 in such manner as may be prescribed.*

- (2) A specialized agency of United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner prescribed, before the expiry of six months from the last day of the quarter in which such supply was received

- (3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilized input tax credit at the end of any tax period:

*Provided that no refund of unutilized input tax credit shall be allowed in cases other than-*

(i) zero rated supplies made without payment of tax

(ii) 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, except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

*Provided Further that no refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty.*

*Provided also that no refund of input tax credit shall be allowed if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies .*

- (4) *The application shall be accompanied by—*
- (a) *such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and*
  - (b) *such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:*

*Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but, he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.*

- (5) *If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in section 57.*
- (6) *Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis ninety percent of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.*
- (7) *The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects.*
- (8) *Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—*
- (a) *refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies;*
  - (b) *refund of unutilized input tax credit under sub-section (3);*
  - (c) *refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;*

- (d) *refund of tax in pursuance of section 77;*
- (e) *the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or*
- (f) *the tax or interest borne by such other class of applicants as the Government may, on the recommendation of the Council, by notification, specify.*
- (9) *Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (8).*
- (10) *Where any refund is due under the said sub-section (3) to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any Court, Tribunal or Appellate Authority by the specified date, the proper officer may—*
- (a) *withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;*
- (b) *deduct from the refund due, any tax, interest penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the erstwhile law.*
- Explanation- For the purposes of this sub-section the expression “specified date” shall mean the last date for filing an appeal under this Act.*
- (11) *Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceeding on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.*
- (12) *Where a refund is withheld under sub-section (11), the taxable person shall notwithstanding anything contained in section 56, be entitled to interest at such rate not exceeding six per cent, as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund.*
- (13) *Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident taxable person under sub-section (2) of section 27 shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39.*
- (14) *Notwithstanding anything contained in this section, no refund under sub-section (5) or sub-section (6) shall be paid to an applicant if the amount is less than one thousand rupees.*

*Explanation. — For the purposes of this section -*

1. *“refund” includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilized input tax credit as provided under sub-section (3).*
2. *“relevant date” means –*
  - (a) *in the case of goods exported out of India where 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, -*
    - (i) *if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or*
    - (ii) *if the goods are exported by land, the date on which such goods pass the frontier, or*
    - (iii) *if the goods are exported by post, the date of dispatch of goods by Post Office concerned to a place outside India;*
  - (b) *in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;*
  - (c) *in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of -*
    - (i) *receipt of payment in convertible foreign exchange, where the supply of services had been completed prior to the receipt of such payment; or*
    - (ii) *issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice;*
  - (d) *in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of Appellate Authority, Appellate Tribunal or any Court, the date of communication of such judgment, decree, order or direction;*
  - (e) *in the case of refund of unutilized input tax credit under sub-section (3), the end of the financial year in which such claim for refund arises;*
  - (f) *in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof.*
  - (g) *in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and*
  - (h) *in any other case, the date of payment of tax.*

### 54.1 Introduction

This section deals with the legal and procedural aspects of claiming refund by any person in respect of -

- any tax (which was excess paid);
- interest paid on such tax; or
- any other amount paid (which was not required to be paid);
- input tax relating to goods and/or services that are exported out of India;
- tax on inputs or input services “used” in the goods and/or services exported out of India including zero rated supply;
- tax on the supply of goods regarded as deemed exports;
- unutilized input tax credit at the end of tax period in cases of:
  - exports, other than when
    - goods are subjected to export duty.
    - the supplier avails drawback of central tax or claims refund of integrated tax paid on such supplies.
  - input tax rate being higher than output tax rate, other than NIL rated or fully exempted.

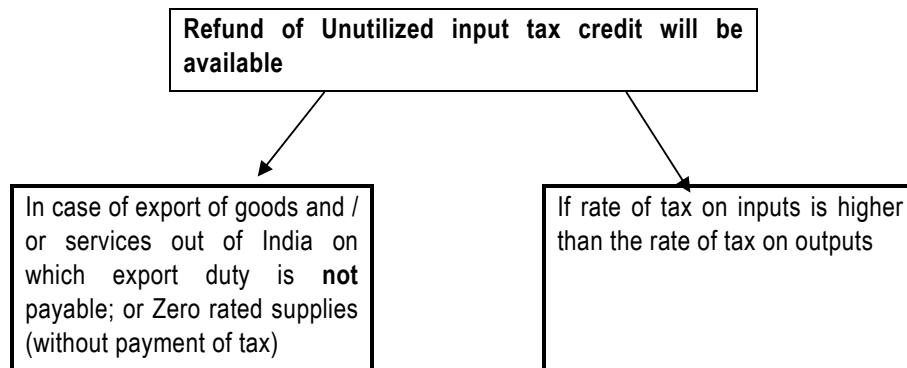
This section provides for conditions and procedures for claiming refund without specifying all the circumstances in which the refund will be eligible to an applicant.

Thus, it can be inferred that refund is possible only when tax, interest or any other amounts are physically paid in cash and in respect of exports / deemed exports in the form of input tax.

### 54.2 Analysis

- (i) This provision states that the application for refund shall be made before the expiry of two years from the relevant date;
- (ii) The time limit of two years will not apply where tax / interest / or any other amount has been paid under protest or otherwise.
- (iii) In case of taxable person claiming refund of any balance in the electronic cash ledger, it can be claimed in the return furnished under section 39.
- (iv) Following persons are entitled to a refund of tax paid by it on inward supplies of goods or services or both –
  - (a) A specialized agency of the United Nations Organization or
  - (b) Any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947,
  - (c) Consulate or Embassy of foreign countries or

- (d) any other person or class of persons as notified under section 55.
- (v) Such agencies may make an application for refund, in such specified form and manner as may be prescribed within six months from the end of the quarter in which such supply was received.
- (vi) Refund of the unutilized input tax credit can be claimed at the end of any tax period in the following cases:



However, refund is also not eligible in the following cases:

- (a) If the goods exported out of India are subject to export duty; or  
If the goods supplied are exempted or nil rated;
- (b) If supplier claims refund of output tax paid under IGST Act.
- (c) If the supplier avails duty drawback or refund of IGST on such supplies.

In a business scenario, such a situation will not arise as once tax is paid on outward supply there will not be any balance left relating to such transaction in respect of which refund is possible.

- (vii) If the amount of refund claim is less than rupees 2 lakh, a self-declaration based on the documentary and other evidences available with the claimant, certifying that he has not passed on the incidence of such tax and interest would suffice to claim refund.
- (viii) The refund relating to an application if found in order, will be sanctioned within sixty days from the date of receipt of application.
- (ix) The refund will be sanctioned to the claimant, in the following cases –
- refund of tax paid on zero-rated supply of goods or services or both
  - refund of tax on inputs or input services used in making zero-rated supply
  - refund of unutilized input tax credit as indicated supra;
  - the tax / interest / other amounts paid by the applicant, if he had not passed on the incidence of tax to any other person; or

- refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued or where a refund voucher has been issued
- refund of tax in pursuance of section 77 which means a registered person who has paid CGST/SGST/UTGST on a transaction considered by him as INTRA-STATE supply but held as INTER-STATE supply;

the tax or interest borne by notified class of applicants (done by Central/State Government on the recommendation of the council);

- (x) In all cases other than the one listed above, where the application is found to be in order, the refund amount, shall be credited to Consumer Welfare Fund within 60 days of receipt of the application. (refer section 57 for Consumer Welfare Fund)
- (xi) In case of refund claimed by persons other than notified registered person where refund is on account of export of goods and/or services, the proper officer may refund ninety percent of the total amount claimed (excluding input tax credit not yet finalized). This refund of 90% will be on a provisional basis, and will be subject to conditions, limitations and safeguards. Remaining ten percent may be refunded after due verification of documents furnished by the applicant.
- (xii) In case of claim of refund of accumulated input tax credit, the refund due will be either withheld or deducted in cases where –
  - A person defaults in furnishing any return;
  - A person is required to pay any tax, interest or penalty ordered, which is not stayed by Court or Appellate Authority within the last date for filing an appeal under this act.
- (xiii) The deduction from refund due may be tax, interest, penalty, fee or any other amount which remains unpaid under GST Act or erstwhile law. In cases where the refund is a consequence of an order and such order is in –
  - appeal; or
  - further proceeding; or
  - any other proceeding under this Act, and

If the Commissioner is of the opinion that grant of refund would affect the revenue adversely in the appeal or proceeding on account of malfeasance or fraud committed, the commissioner may withhold the refund till such time as it may be determined. This can be done only after affording the taxpayer an opportunity of being heard.

The Government vide Notification No. 13/2017- Central Tax dated 28-06-2017 has prescribed, on the recommendation of the Council, 6% as the rate of interest for a refund withheld under sub-section (11) of section 54.

Note: As per Rule 91, provisional refund shall be granted subject to the condition that the person claiming refund has, during any period of five years immediately preceding

the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an erstwhile law where the amount of tax evaded exceeds two hundred and fifty lakh rupees.

The proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being prima facie satisfied that the amount claimed as refund is due to the applicant then he shall make an order in FORM GST RFD-04, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding seven days from the date of the acknowledgement under sub-rule (1) or sub-rule (2) of rule 90 (refer para 54.8). Also, the proper officer shall issue a payment advice in FORM GST RFD-05 for the amount sanctioned and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

- (xiv) The amount of advance tax deposited by a casual taxable person or a non-resident taxable person at the time of taking registration would be refunded only after furnishing all the returns required under section 39, of the entire period for which the certificate of registration granted to him had remained in force.
- (xv) No refund shall be granted or paid to an applicant, if the amount is less than rupees one thousand.

**Relevant date:** The relevant date is crucial to determine the time within which the refund claim has to be filed. If the refund claim is made after the relevant date, the refund claim would be rejected and there is no provision in the Act to condone the delay in filing refund claim and accept delayed refund claims.

The relevant date is identified as follows:

- Refund of tax paid on goods exported or tax paid on inputs/input service
  - If exported by sea or air ->date when the ship or the aircraft leaves India; or
  - If exported by land ->date when such goods pass the Customs frontier; or
  - If exported by post ->date of dispatch of goods by concerned Post Office to a place outside India.
- Deemed exports supply of goods->the date on which the return relating to such deemed exports is furnished.
- Refund of tax paid on such services exported itself or tax paid on inputs/input service
  - If supply of service is completed prior to the receipt of payment->date of receipt of payment in convertible foreign exchange;
  - If payment for the service received in advance prior to the date of issue of invoice -> date of issue of invoice.



- Refund of tax as a consequence of judgment, decree, order or direction of Appellate authority, Appellate Tribunal or any Court -> date of communication of such judgement/decreed/order/ direction.
- Refund of unutilized input tax credit accumulated due to exports including zero rated supplies - end of the financial year in which such claim for refund arises;
- Provisionally paid tax - the date of adjustment of tax after the final assessment.
- In the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and
- In any other case, the date of payment of tax

Situation of Refund	2 years from the Relevant Date as under
On account of excess payment	Date of payment of tax
On account of Export of Goods	Date on which proper officer gives an order for export known as "LET EXPORT ORDER"
On account of Export of Services	Date of BRC
On account of finalization of provisional assessment	Date of the finalization order
In pursuance of an appellate authority's order in favour of the taxpayer	Date of communication of the appellate authority's order
On account of no/less liability arising at the time of finalization of investigation proceedings	Date of communication of adjudication order or order relating to completion of investigation
On account of accumulated credit of GST in case of a liability to pay service tax in partial reverse charge cases	Date of providing of service

**54.3** Rule 89(1) facilitates a taxable person to claim refund in following manner under various circumstances

S.No.	Scenarios	Manner to claim refund
1	Refund of any tax, interest, penalty, fees or any other amount paid	File an application electronically in FORM GST RFD-01 through the common portal
2	Refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49	Such a refund may be made through the return furnished for the relevant tax period in FORM GSTR-3 or FORM GSTR-4 or FORM GSTR-7

**Note:** In terms of Notification No. 55/2017 – Central Tax dated 15<sup>th</sup> November 2017, Rule 97A has been inserted in the Central Goods and Service Tax Rules, 2017.

In terms of Rule 97A, any reference to this Chapter (i.e., with respect to Refunds) any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.

In other words, the refunds may be filed manually and the processing of refund with respect to any notice, reply or order, among others, can also be issued / filed manually.

**54.4** As per Rule 89(2) the above application(s) shall be accompanied by following documentary evidences

S.No.	Scenarios	Documents
1	Pre-deposit as per sub-section (6) of section 107 and sub-section (8) of section 112	Reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the pre-deposit amount.
2	Refund on account 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
3	Refund on account of export of services	A statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates
4	Refund on account of supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer	A statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding the endorsement by the specified officer of the Zone  A declaration to the effect that the Special Economic Zone unit or the Special Economic Zone developer has not availed the input tax credit of the tax paid by the supplier of goods or services or both, in a case where the refund is on account of supply of goods or services made to a Special Economic Zone unit or a Special Economic Zone developer

5	Refund on account of supply of Service made to a Special Economic Zone unit or a Special Economic Zone developer	<p>A statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer</p> <p>A declaration to the effect that the Special Economic Zone unit or the Special Economic Zone developer has not availed the input tax credit of the tax paid by the supplier of goods or services or both, in a case where the refund is on account of supply of goods or services made to a Special Economic Zone unit or a Special Economic Zone developer</p>						
6	Refund on account of deemed exports (where refund is claimed by the Supplier)	<p>A statement containing the number and date of invoices along with the following documents notified under Notification No. 49/2017 – Central Tax dated 18<sup>th</sup> October, 2017:</p> <p>(a) Proof of receipt of Goods by the Eligible Recipient:</p> <table border="1" data-bbox="878 1318 1320 1768"> <thead> <tr> <th data-bbox="878 1318 1089 1392">In case of Supply to</th> <th data-bbox="1089 1318 1320 1392">Document required</th> </tr> </thead> <tbody> <tr> <td data-bbox="878 1392 1089 1703">Advance Authorisation Holder or EPCG Holder</td> <td data-bbox="1089 1392 1320 1703">Acknowledgment that Holder has received the goods should be obtained from the jurisdictional Tax officer having jurisdiction over the said Holder,</td> </tr> <tr> <td data-bbox="878 1703 1089 1768">EOUs</td> <td data-bbox="1089 1703 1320 1768">Copy of the tax invoice under</td> </tr> </tbody> </table>	In case of Supply to	Document required	Advance Authorisation Holder or EPCG Holder	Acknowledgment that Holder has received the goods should be obtained from the jurisdictional Tax officer having jurisdiction over the said Holder,	EOUs	Copy of the tax invoice under
In case of Supply to	Document required							
Advance Authorisation Holder or EPCG Holder	Acknowledgment that Holder has received the goods should be obtained from the jurisdictional Tax officer having jurisdiction over the said Holder,							
EOUs	Copy of the tax invoice under							

		<p>which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it</p> <p>(b) Undertaking from the Recipient of the Deemed Export that the Recipient has not taken Input Tax Credit of the GST paid by the Supplier</p> <p>Undertaking from the Recipient of the Deemed Export that they shall not claim the refund of the GST paid by the Supplier.</p>
7	Refund on account of deemed exports (where refund is claimed by the Recipient of Deemed Exports)	<p>A statement containing the number and date of invoices along with further documents as may be notified.</p> <p>However, no documents has been notified by the Government when the Recipient is claiming the Refund.</p> <p>It may be prudent for the Recipient to obtain an undertaking from the Supplier that Supplier has not claimed refund of the GST paid on the Deemed Exports</p>
8	Refund on account of the rate of tax on the inputs being higher than the rate of tax on output supplies, other than nil-rated or fully exempt supplies	<p>A statement containing the number and the date of the invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilised input tax credit under sub-section (3) of section 54</p>
9	Refund arises on account of the finalisation of provisional assessment	<p>The reference number of the final assessment order and a copy of the said order</p>
10	Refund as per Section 77 (tax wrongly collected and paid to Central or state	<p>A statement showing the details of transactions considered as intra-State supply but which is subsequently held to</p>

	government)	be inter-State supply
11	Refund claimed does not exceed two lakh rupees (tax paid but the incidence has not been passed on to the other person)	A declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person
12	Refund claimed exceed two lakh rupees (tax paid but the incidence has not been passed on to the other person)	A Certificate in Annexure 2 of FORM GST RFD-01 issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person

**54.5** As per Rule 89(3), where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.

**54.6** Formula for computation of refund as provided in Rule 89(5) is as under:

- (a) In the case of zero-rated supply of goods or services or both **without payment of tax under bond or letter of undertaking**, refund of input tax credit shall be granted as per the following formula (for the procedure, refer para 54.7) -

$$\text{Refund Amount} = (\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}$$

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

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

- (c) In the case of zero-rated supply of goods or services or both **payment of IGST tax**, refund of entire amount of IGST shall be available (refer para 54.6)

Where, -

- (A) "Refund amount" means the maximum refund that is admissible;
- (B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period;
- (C) "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;
- (D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely: -

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

- (E) "Adjusted Total turnover" means the turnover in a State or a Union territory, as defined under sub-section (112) of section 2, excluding the value of exempt supplies other than zero-rated supplies, during the relevant period;
- (F) "Relevant period" means the period for which the claim has been filed.

#### 54.7 Rule 96 provides for Refund of integrated tax paid on goods exported out of India-

- The shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India
- Such application shall be deemed to have been filed only when: -
  - ✓ 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
  - ✓ the applicant has furnished a valid return in FORM GSTR-3 or FORM GSTR- 3B, as the case may be;

The details of the relevant export invoices contained in FORM GSTR-1 shall be transmitted electronically by the common portal to the system designated by the Customs and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

Provided that where the due date for furnishing of the details of outward supplies in FORM GSTR-1 for a tax period has been extended, then in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the details of information relating to exports as specified in Table 6A of FORM GSTR-1 separately. That is, only the Export Details in FORM GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:

Provided further that the information in Table 6A forming part of Form GSTR-1. (*Refer proviso to Rule 96(2) inserted vide Notification No. 51/2017 – Central Tax dated 28<sup>th</sup> October 2017*)

Note that the Table 6A has to be furnished only after filing of Form GSTR-3B under the respective tax period

As and when the Form auto-drafted in FORM GSTR-1 are furnished for the said tax period, then details of exports will be auto-drafted from the Table 6A referred above. So, the procedure is:

## Steps

- a. File GSTR-3B for a Tax Period
- b. Fill Table 6A of Form GSTR-1 available in the Common Portal. Refund will be processed based on this Table 6A
- c. As and when Form GSTR-1 is filed, the data relating to exports will be auto-populated from the above Table 6A

Upon the receipt of the information regarding the furnishing of a valid return in FORM GSTR-3 or FORM GSTR-3B with Table 6A of Form GSTR-1, as the case may be, from the common portal, the system designated by the Customs shall process the claim for refund and an amount equal to the integrated tax 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.

**Refund Withheld**

- The claim for refund shall be withheld where, -
  - ✓ a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of sub-section (10) or sub-section (11) of section 54; or the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962
    - the proper officer of integrated tax at the Customs station shall intimate the applicant and the jurisdictional Commissioner of central tax, State tax or Union territory tax, as the case may be, and a copy of such intimation shall be transmitted to the common portal
    - the proper officer of central tax or State tax or Union territory tax, as the case may be, shall pass an order in Part B of FORM GST RFD-07
    - Where the applicant becomes entitled to refund of the amount withheld, the concerned jurisdictional officer of central tax, State tax or Union territory tax, as the case may be, shall proceed to refund the amount after passing an order in FORM GST RFD-06

**54.8 Rule 96A provides for Refund of integrated tax paid on export of goods or services under bond or Letter of Undertaking**

- ✓ Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in **FORM GST RFD-11** to the jurisdictional Commissioner (vide circular no 2/2/2017-GST the power has been delegated to Deputy/Assistant Commissioner).
- ✓ The registered person shall bind himself to pay the tax due along with the interest specified under sub-section (1) of section 50 (18%) within a period of —

- (a) fifteen days after the expiry of three months, [ or such further period as may be allowed by the Commissioner,] from the date of issue of the invoice for export, if the goods are not exported out of India; or
- (b) fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange
- ✓ The details of the export invoices contained in FORM GSTR-1 furnished on the common portal shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system.
- Provided that where the due date for furnishing the details of outward supplies in FORM GSTR-1 for a tax period has been extended in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the information relating to exports as specified in Table 6A of FORM GSTR-1 after the return in FORM GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:
- Provided further that the information in Table 6A furnished under the first proviso shall be auto-drafted in FORM GSTR-1 for the said tax period.
- Note that the Table 6A has to furnished only after filing of Form GSTR-3B forunder the respective tax period.
- ✓ In the event, goods are not exported within the time specified above and the registered person fails to pay the IGST amount, the export as allowed under bond or Letter of Undertaking shall be withdrawn forthwith and the said amount shall be recovered from the registered person in accordance with the provisions of section 79.
- ✓ The export as allowed under bond or Letter of Undertaking withdrawn shall be restored immediately when the registered person pays the amount due.
- The provisions of sub rule (1) shall apply, mutatis mutandis, in respect of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit without payment of integrated tax.”

**Note:** The Government vide Notification No. 16/2017 – Central Tax dated 7th July, 2017 has specified following conditions for a registered person to be eligible for submission of Letter of Undertaking in place of a bond.

- (a) a status holder as specified in paragraph 5 of the Foreign Trade Policy 2015-2020; or
- (b) who has received the due foreign inward remittances amounting to a minimum of 10% of the export turnover, which should not be less than one crore rupees, in the preceding financial year.

Further, the registered person has not been prosecuted for any offence under the Central Goods and Services Tax Act, 2017 (12 of 2017) or under any of the erstwhile laws in case where the amount of tax evaded exceeds two hundred and fifty lakh rupees.



However, the above requirement **has been relaxed with effect from 04<sup>th</sup> October, 2017**

The Government vide Notification No. 37/2017 – Central Tax dated 04<sup>th</sup> October, 2017 has extended the facility of Letter of Undertaking for all registered tax payers.

Only tax payer who is not eligible for the LUT facility is tax payer who has been prosecuted for any offence under the CGST Act, SGST Act, IGST Act or any of the existing laws in force in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees

A self-declaration by the exporter that he has not been prosecuted is sufficient for the purposes of Notification No. 37/2017- Central Tax dated 4<sup>th</sup> October, 2017. Department may verify the claim after acceptance of the LUT, unless Department has any specific information otherwise regarding the prosecution. (Circular No. 8/8/2017-GST dated 04<sup>th</sup> October 2017)

Further, any person who is prosecuted for an evasion more than Rs.2,50,000 shall execute a Bond. The Bond shall be accompanied by Bank Guarantee for 15% of the Bond amount. (Circular No. 8/8/2017-GST dated 04<sup>th</sup> October 2017)

The LUT facility is also extended to Supplies made to SEZ.

#### **54.9 Refund in case of Deemed Exports**

Deemed Exports are defined as “Supplies” as may be notified under Section 147 of the CGST Act.

The Central Government vide Notification No. 48/2017 – Central Tax dated 18<sup>th</sup> October, 2017 has notified the following items as “Deemed Exports”

- ✓ Supply of goods by a registered person against Advance Authorisation
- ✓ Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation (EPCG)
- ✓ Supply of goods by a registered person to Export Oriented Unit (EOU). EOU refers to
  - Export Oriented Unit (EOU)
  - Electronic Hardware Technology Park Unit (EHTP) or
  - Software Technology Park Unit (STP) or
  - Bio-Technology Park Unit (BTP).
- ✓ Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated the 30<sup>th</sup> June, 2017 (as amended) against Advance Authorisation.

#### **Analysis**

The Foreign Trade Policy (2015-2020) in terms of Para 7.02 has provided a list of Supply which are Deemed Supplies under the FTP.

However, only the aforesaid four supplies have been covered under Deemed Export under GST. Therefore, other Deemed Export under FTP but not covered above are liable for GST. However, the recipient is eligible to take Input Tax Credit of the tax paid by the Supplier

subject to restrictions / blocking of credits as Section 16, 17 of the CGST Act and rules thereunder.

### Person claiming refund

The Application of refund may be filed by the Recipient of the Goods.

However, the Supplier may also file the refund application if the Supplier furnishes a declaration from the Recipient that he has not availed Input Tax Credit of the tax paid.

### Special Procedures with Respect to Supply of Goods to EOUs

The Government vide Circular No. 14/14 /2017 – GST dated 06<sup>th</sup> November 2017 has issued detailed guidelines on the procedure to be adopted for Supply of goods to EOU, EHTP, STP and BTP (hereinafter collectively referred to as “EOU”)

Procedure to be adopted by the EOU

Steps	Particulars	Form No, if any / Due Date	Explanation
Step 1	Issuance of Prior Intimation	Form-A	The EOU shall give Prior Intimation of Goods to be procured from the Supplier in Form-A. The Intimation must be serially number and must prepared in Triplicate and sent to: (1) the Registered Supplier undertaking the Supply (2) the jurisdictional GST Officer in charge of the Supplier (3) the jurisdictional GST Officer in charge of the EOU
Step 2	Supply of goods by the Supplier		The registered supplier thereafter will supply goods under tax invoice to the recipient EOU / EHTP / STP / BTP unit.
Step 3	Endorsement of Invoice by EOU on receipt of goods		On receipt of such supplies, the EOU, <del>the Unit</del> shall endorse the tax invoice and send a copy of the endorsed tax invoice to – (1) the Registered Supplier undertaking the Supply (2) the jurisdictional GST Officer in charge of the Supplier. (3) the jurisdictional GST Officer in charge of the EOU.

			Such endorsement is the Proof of Deemed Export Supplies by a registered person to the EOU
Step 4	EOU shall maintain records for receipt, use and removal of Goods	Form-B	EOU shall maintain the record of Receipt, use and Removal of Goods in Form-B The data is required to be maintained in Digital form. The Record must be updated immediately and accurately and open for Verification by the Proper office
Step 5	Monthly submission of Form-B to the GST Officer	Due date - 10th of the Following month	A digital copy of Form – B containing transactions for the month, shall be provided to the jurisdictional GST officer, each month in a CD or Pen drive, as convenient to the said unit.

**54.10 Rule 90 of the CGST Rules 2017 provides for Acknowledgement and Deficiency memo**

- (a) **The application relates to a claim for refund from the electronic cash ledger-** on receipt of the application for refund, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period 60 days for passing an order by proper officer shall be counted from such date of filing.
- (b) **The application for refund, other than claim for refund from electronic cash ledger-** such applications shall be forwarded to the proper officer who shall, within a period of fifteen days of filing of the said application shall scrutinize the application for its completeness and where the application is found to be complete, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period 60 days for passing an order by proper officer shall be counted from such date of filing.
- (c) Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in FORM GST RFD-03 through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies.
- (d) If deficiencies have been communicated in FORM GST RFD-03 under the State Goods and Service Tax Rules, 2017, the same shall also deemed to have been communicated under CGST Act also.

**54.11 Note:** Refer Notification No. 55/2017 – Central Tax dated 15<sup>th</sup> November 2017, mentioned above.

**54.12 Rule 92 provides for Order sanctioning refund-**

<b>Rule No</b>	<b>Scenarios</b>	<b>Procedures</b>
92(1)	When entire refund is payable	➤ Where, upon examination of the application, the proper officer is satisfied that a refund under sub-section (5) of section 54 is due and payable to the applicant, he shall make an order in FORM GST RFD-06 sanctioning the amount of refund to which the applicant is entitled, mentioning therein the amount, if any, refunded to him on a provisional basis under sub-section (6) of section 54
Proviso to 92(1)	In cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any erstwhile law	➤ the proper officer shall pass an order giving details of the adjustment, which shall be issued in Part A of FORM GST RFD-07.
92(2)	Where the proper officer or the Commissioner is of the opinion that the amount of refund is liable to be withheld under ➤ the provisions of sub-section (10) [when the applicant is required to pay tax, interest or penalty which has not been stayed by any court] or, ➤ sub-section (11) of section 54 [when any matter of appeal is pending and refund shall affect the revenue	➤ the proper officer shall pass an order in Part B of FORM GST RFD-07 informing him the reasons for withholding of such refund
92(3)	Where the proper officer is satisfied that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant	➤ the proper officer shall issue a notice in FORM GST RFD-08 to the applicant; ➤ the Applicant shall furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and ➤ after considering the reply, the proper officer

		<p>shall make an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically</p> <p>➤ Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard.</p>
92(4)	Refund credited to the account of applicant	<p>➤ Where the proper officer is satisfied that the amount is payable to the applicant he shall make an order in FORM GST RFD-06 then he shall issue a payment advice in FORM GST RFD-05 for refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration and as specified in the application for refund.</p>
92(5)	Refund credited to Consumer Welfare Fund	<p>➤ Where the proper officer is satisfied that the amount refundable is not payable to the applicant under sub-section (8) of section 54, he shall make an order in FORM GST RFD-06 and issue an advice in FORM GST RFD-05, for the amount of refund to be credited to the Consumer Welfare Fund</p>

Note: Refer Notification No. 55/2017–Central Tax dated 15<sup>th</sup> November 2017, mentioned above.

#### 54.13 Rule 93 provides for the Credit of the amount of rejected refund claim

Where any amount claimed as refund is rejected under rule 92 i.e. a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal and the amount debited then to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in FORM GST PMT-03. Also, where any deficiencies have been communicated under sub-rule (3) of rule 90, the amount debited under sub-rule (3) of rule 89 shall be re-credited to the electronic credit ledger.

#### 54.14 Comparative review

These provisions are broadly similar to the provisions contained in erstwhile Central Indirect Tax law. However, they are restrictive when compared to the refund mechanism under earlier State Value Added Tax law. The GST Law provides refund of unutilised credit in certain

specified circumstances where the State VAT Laws provide for refund of unutilised credit under any circumstances.

#### 54.15 Related provisions

Section	Description	Remarks
<b>Section 33</b>	Amount of tax to be indicated in tax invoice and other documents.	Invoice or other documents referred to in Section 30 has to be enclosed along with refund application.
<b>Section 57</b>	Consumer Welfare Fund.	Where the claimant is unable to establish the fact that incidence of duty is not passed on, the amount of refund claimed will be credited to Consumer Welfare Fund.

#### 54.16 FAQs

Q1. Whether there is any time limit to file refund claim?

Ans. Generally, Yes. The refund claim has to be filed within two years from the relevant date. However, if the tax or interest thereon or amount claimed as refund is paid under protest, the time limit is not applicable.

Q2. Whether there is any provision for condonation of delay in filing refund claim beyond two years from the relevant date (where tax/interest/amount is not paid under protest)?

Ans. No. There is no provision to condone the delay and the refund claim will be rejected without getting into merits of the refund claim.

Q3. Whether there is any procedure to pay tax/interest/amount under protest?

Ans. There is no mechanism or procedure set out in the GST Act or. As per the practice prevailing under the erstwhile central indirect tax laws, a letter expressing the fact that the tax/interest/amount is being paid under protest setting out the reason may be sufficient to consider that the payment is made under protest.

Q4. What would be the time limit for sanctioning refund?

Ans. The refund has to be sanctioned within 60 days from the receipt of duly completed application containing all the prescribed information/documents.

Q5. What happens in case the incidence of duty/tax has been passed on by the person claiming the refund?

Ans. The refund claimed and eligible will be credited to Consumer Welfare Fund.

Q6. Is there a minimum amount specified below which no refund can be claimed?

Ans. Yes. The minimum amount of refund payable should be ₹ 1000/- or more.

Q7. Whether refund of unutilized credit at the end of tax period can be claimed by supplier who does not have any exports.

Ans. Yes. It is available in cases where the accumulation of credit is for the reason of tax rate on inputs being higher than the rate of tax on outputs other than NIL rated or fully exempted outward supply that is in inverted duty structure but such provision is applicable for inputs and not for input services.

**54.17 MCQ**

Q1. In case of refund claim on account of export of goods and/or services made by such category of registered taxable persons as may be notified in this behalf, what percent would be granted as refund on a provisional basis?

- (a) 70%
- (b) 65%
- (c) 80%
- (d) 90%

Ans. (d) 90%

Q2. What is the relevant date in case of refund on account of excess payment of GST due to mistake or inadvertence?

- (a) Date of payment of GST
- (b) Last day of the financial year
- (c) Date of providing of service
- (d) None of the above

Ans. (a) Date of payment of GST

Q3. Refund of accumulated input tax of inputs credit at the end of any tax period is eligible in cases of?

- (a) Due to purchase of huge stocks
- (b) Credit cannot be used for any reason.
- (c) Due to Exports and input tax rate of inputs being higher than output tax rate
- (d) Due to Exports only.

Ans. (c) Due to Exports and input tax rate of inputs being higher than output tax rate

Q4. Relevant date for computing time limit to claim refund in case of deemed exports supply of goods is –

- (a) Date of filing returns relating to such deemed exports;
- (b) Date of goods leaving India;
- (c) Date of payment of Tax;

(d) Date of receipt of consideration in Foreign Exchange;

Ans. (a) Date of filing returns relating to such deemed exports\

### Statutory Provision

#### **55. Refund in certain cases**

*The Government may, on the recommendation of the Council, by notification, specify any specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other person or class of persons as may be specified in this behalf, who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them.*

#### **55.1 Introduction**

This section deals with refund of taxes paid on notified supplies of goods or services or both received by certain specified agencies notified by the Government on the recommendation of the Council.

#### **55.2 Analysis**

This section provides that –

- (i) The Government, is vested with powers to notify certain agencies on the recommendation of the Council, to be entitled to claim refund.
- (ii) The agencies that can be notified are –
  - (a) any specialized agency of the United Nations Organization or
  - (b) any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947,
  - (c) any other person or class of persons as may be specified.
- (iii) In addition to the above, Consulate or Embassy of foreign countries would also be eligible for refund.
- (iv) The agencies mentioned above would be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them. The refund claim is subject to such conditions and restrictions as may be prescribed,

#### **55.3 Procedure for refund of tax**

Rule 95 provides for following procedure for refunds under Section 55

- (a) Any person eligible to claim refund of tax paid by him on his inward supplies as per notification issued under section 55 shall apply for refund in FORM GST RFD-10 once in every quarter, electronically on the common portal, either directly or through a



Facilitation Centre notified by the Commissioner, along with a statement of the inward supplies of goods or services or both in FORM GSTR-11, prepared on the basis of the statement of the outward supplies furnished by the corresponding suppliers in FORM GSTR-1.

- (b) An acknowledgement for the receipt of the application for refund shall be issued in FORM GST RFD-02.
- (c) The refund of tax paid by the applicant shall be available if-
- the inward supplies of goods or services or both were received from a registered person against a tax invoice and the price of the supply covered under a single tax invoice exceeds five thousand rupees, excluding tax paid, if any;
  - Name and Goods and Services Tax Identification Number or Unique Identity Number of the applicant is mentioned in the tax invoice; and
  - such other restrictions or conditions as may be specified in the notification are satisfied.
- (d) The provisions of rule 92 shall, mutatis mutandis, apply for the sanction and payment of refund under this rule.
- (e) Where an express provision in a treaty or other international agreement, to which the President or the Government of India is a party, is inconsistent with the provisions of this Chapter, such treaty or international agreement shall prevail.

Note: In terms of Notification No. 55/2017 – Central Tax dated 15th November 2017, Rule 97A has been inserted in the Central Goods and Service Tax Rules, 2017.

In terms of Rule 97A, any reference to this Chapter (i.e., with respect to Refunds) any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.

In other words, the Refunds may be permitted to be filed manually and the processing of refund with respect to any notice, reply or order, among others, can also be issued / filed manually.

#### 55.4 Related provision

Section	Description
Section 54	Refunds

#### 55.5 FAQs

1. Name the agencies that can be notified to be eligible to claim refund of taxes under Section 55 of the CGST Act?

Ans. Any specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947 and any other person or class of persons as may be specified in this behalf, are the agencies that can be notified.

2. What refund are the agencies specified above entitled to claim under this section?

Ans. The agencies specified above are entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them.

### 55.6 MCQs

Q1. Who is empowered to notify the agencies that are entitled to claim refund under this section?

- (a) Government
- (b) Board
- (c) GST Council
- (d) None of the above

Ans. (a) Government

### Statutory Provision

#### **56. Interest on delayed refunds**

*If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of an application under the said sub-section till the date of refund of such tax.*

*Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.*

*Explanation.- For the purpose of this section, where any order of refund is made by an Appellate Authority, Tribunal or any Court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or, by the Court shall be deemed to be an order passed under the said sub-section (5).*

**56.1 Introduction**

This section provides for payment of interest on delayed refunds beyond the period of sixty days from the date of receipt of application to avoid delays in sanction or grant of refund.

**56.2 Analysis**

- (i) The section provides that interest is payable if –
  - Tax paid becomes refundable under section 54(5) to the applicant; and
  - It is not refunded within 60 days from the date of receipt of application for refund of tax under Section 54(1)
- (ii) Interest is liable to be paid from the due date for payment of refund till the date of sanction or grant of refund.
- (iii) For the above delay, the Government has specified 6% as the rate of interest vide Notification No. 13 /2017 – Central Tax dated June 28, 2017.

**Illustration:**

A Ltd has filed a refund claim of excess tax paid with all the documents and records on 19.08.2017. The department sanctioned the refund on 30.11.2017. In such a case, interest has to be paid for the period from 19.10.2017 to 30.11.2017.

- (iv) Explanation to section provides that in cases where the orders of Appellate Authority / Tribunal / Court sanctions refund in an appeal, against the order of refund sanctioning authority, the order of Appellate Authority / Tribunal / Court will be considered as orders passed by refund sanctioning authority. In other words, by virtue of such order, the refund has become due and the interest will then be computed from the date of completion of 60 days from the date of original refund claim made. For all such claims the Government has specified 9% as the rate of interest vide notification no. Notification No. 13 /2017 – Central Tax dated June 28, 2017.

**Illustration:**

A Ltd has filed a refund claim of excess tax paid with all the documents and records on 19.08.2017. It was rejected by refund sanctioning authority. On Appeal the Appellate Authority passed the order for refund based on which the department sanctioned the refund on 30.09.2018. In such case, interest has to be paid for the period from 18.10.2017 to 30.09.2018.

- (v) **As per Rule 94 which provides for Order sanctioning interest on delayed refunds-** where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment advice in FORM GST RFD-05, specifying the following:
  - (a) Amount of refund which is delayed,
  - (b) the period of delay for which interest is payable and

- (c) the amount of interest payable,  
and such amount of interest shall be electronically credited to any of the bank accounts of the applicant.

### 56.3 Comparative review

The refund provisions under the GST regime are in line with the refund provisions envisaged in the erstwhile regime under Central Excise law under section 11BB of the Central Excise Act, 1944.

### 56.4 Related provisions

Section/Rule/Form	Description	Remarks
Section 54	Refunds	Provision providing for refund of tax.

### 56.5 FAQ

- Q1. Whether interest is payable on delayed sanction of refund of tax only?  
Ans. Yes. The provision for payment of interest is only with respect to delayed payment of refund of tax only and not interest or any other amount sanctioned as refund.
- Q2. What would be the rate of interest on delay of sanctioning refund?  
Ans. The government has specified 6% as the rate of interest for delay in refund under Section 54(5) and 9% for the delay of refund arising from an order passed by an adjudicating authority vide notification no. Notification No. 13 /2017 – Central Tax dated June 28, 2017.
- Q3. Whether interest is payable on delayed refund of unutilized input tax credit.  
Ans. The provision only refers to refund claim under Section 48(1) relating to tax paid and not Section 54(3). Therefore, there is no provision for payment of interest on delayed refund of unutilized input tax credit.

### 56.6 MCQ

- Q1. Interest U/s 56 is applicable on delayed payment of refunds issued under?  
(a) Section 54  
(b) Section 44  
(c) Section 41  
(d) Section 45  
Ans. (b) Section 54
- Q2. Interest U/s56 has to be paid for delayed refunds, if the refund is not granted within .....

- (a) 90 days
- (b) 3 months
- (c) 60 days
- (d) None of the above

Ans. (c) 60 days

**Statutory Provision:**

**57. Consumer Welfare Fund**

*The Government shall constitute a Fund, to be called the Consumer Welfare Fund and there shall be credited to the Fund, —*

- (a) the amount referred to in sub-section (5) of section 54;*
  - (b) any income from investment of the amount credited to the Fund; and*
  - (c) such other monies received by it,*
- in such manner as may be prescribed.*

**57.1 Introduction**

If the applicant is unable to prove that the incidence was not actually passed onto any other person then the refund amount is credited to the Consumer Welfare Fund.

The overall objective of the Consumer Welfare Fund is to provide financial assistance to promote and protect the welfare of the consumers and strengthen the consumer movement in the country.

**57.2 Analysis**

The following amounts will be credited to the Fund, in such manner as may be prescribed, -

- the amount of refund referred to in sub-section (5) or sub-section (6) of section 54; and
- any income earned from investment of the amount credited to the Fund and
- such other monies received by it from the Government.

**57.3 Constitution of the Committee**

Rule 97 of the CGST Rules provides that The Government shall constitute a Standing Committee with a Chairman, a Vice-Chairman, a Member Secretary and such other Members as it may deem fit and the Committee shall make recommendations for proper utilisation of the money credited to the Consumer Welfare Fund for welfare of the consumers. The Committee shall meet as and when necessary, but not less than once in three months.

**57.4 Utilisation of funds by the Committee**

Rule 97 of the CGST Rules also provides that Any utilisation of amount from the Consumer

Welfare Fund under sub-section (1) of section 58 shall be made by debiting the Consumer Welfare Fund account and crediting the account to which the amount is transferred for utilisation.

Any agency or organisation engaged in consumer welfare activities for a period of three years registered under the provisions of the Companies Act, 2013 (18 of 2013) or under any other law for the time being in force, including village or Mandal or samite level co-operatives of consumers especially Women, Scheduled Castes and Scheduled Tribes, or any industry as defined in the Industrial Disputes Act, 1947 (14 of 1947) recommended by the Bureau of Indian Standards to be engaged for a period of five years in viable and useful research activity which has made, or is likely to make, significant contribution in formulation of standard mark of the products of mass consumption, the Central Government or the State Government may make an application for a grant from the Consumer Welfare Fund. provided that a consumer may make application for reimbursement of legal expenses incurred by him as a complainant in a consumer dispute, after its final adjudication.

All applications for grant from the Consumer Welfare Fund shall be made by the applicant Member Secretary, but the Committee shall not consider an application, unless it has been inquired into in material details and recommended for consideration accordingly, by the Member Secretary.

#### **57.5 Powers of the Committee**

According to Rule 97(8) of the CGST Rules, the Committee shall have powers -

- (a) to require any applicant to produce before it, or before a duly authorised Officer of the Government such books, accounts, documents, instruments, or commodities in custody and control of the applicant, as may be necessary for proper evaluation of the application;
- (b) to require any applicant to allow entry and inspection of any premises, from which activities claimed to be for the welfare of consumers are stated to be carried on, to a duly authorised officer of the Central Government or, as the case may be, State Government;
- (c) to get the accounts of the applicants audited, for ensuring proper utilisation of the grant;
- (d) to require any applicant, in case of any default, or suppression of material information on his part, to refund in lump-sum, the sanctioned grant to the Committee, and to be subject to prosecution under the Act;
- (e) to recover any sum due from any applicant in accordance with the provisions of the Act;
- (f) to require any applicant, or class of applicants to submit a periodical report, indicating proper utilisation of the grant;

- (g) to reject an application placed before it on account of factual inconsistency, or inaccuracy in material particulars;
- (h) to recommend minimum financial assistance, by way of grant to an applicant, having regard to his financial status, and importance and utility of nature of activity under pursuit, after ensuring that the financial assistance provided shall not be mutualised;
- (i) to identify beneficial and safe sectors, where investments out of Consumer Welfare Fund may be made and make recommendations, accordingly;
- (j) to relax the conditions required for the period of engagement in consumer welfare activities of an applicant;
- (k) to make guidelines for the management, administration and audit of the Consumer Welfare Fund.

#### 57.6 Comparative review

These provisions are broadly similar to the provisions contained in erstwhile Central Indirect Tax laws.

#### 57.7 Related provisions

Section	Description
Section 54	Provision for claiming refund of tax
Section 58	Provisions relating to the manner of utilization of the fund.

#### 57.8 FAQs

Q1. Which are the amounts credited to Consumer Welfare Fund?

Ans. The following amounts will be credited to the Fund, in such manner as may be prescribed-

- the amount of refund referred to under sub-section (5) or sub-section (6) of section 54; and
- any income earned from investment of the amount credited to the Fund and
- such other monies received.

#### 57.9 MCQ

Q1. In cases where the application of refund is found to be in order, the refund amount shall be credited to ..... Fund.

- (a) Investor Protection and Education Fund
- (b) Consumer Protection Fund

- (c) Consumer Welfare Fund
- (d) Refund Claim Fund

Ans. (c) Consumer Welfare Fund

Q2. The overall objective of the Consumer Welfare Fund is

- (a) To facilitate a simplified refund mechanism.
- (b) to promote and protect the welfare of the consumers and strengthen the consumer movement in the country.
- (c) To boost the overall growth of the economy
- (d) Both (a) and (c)

Ans. (b) to promote and protect the welfare of the consumers and strengthen the consumer movement in the country

### Statutory Provision

#### **58. Utilization of the Fund**

- (1) *All sums credited to the Fund shall be utilised by the Government for the welfare of the consumers in such manner as may be prescribed.*
- (2) *The Government or the authority specified by it shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.*

#### **58.1 Introduction**

The monies credited to the Consumer Welfare Fund are meant to provide financial assistance to promote and protect the welfare of the consumers and strengthen the consumer movement in the country.

#### **58.2 Analysis**

- (i) It should be ensured that the monies credited to the fund shall be utilized to provide assistance to protect the welfare of consumers as per the rules made by the Government
- (ii) The Government shall maintain proper and separate records in relation to the Fund in consultation with the Comptroller and Auditor-General of India.
- (iii) As per Rule 97(9) of the CGST Rules, the Central Consumer Protection Council and the Bureau of Indian Standards shall recommend to the Goods and Service Tax



Council, the broad guidelines for considering the projects or proposals for the purpose of incurring expenditure from the Consumer Welfare Fund.

### 58.3 Comparative review

These provisions are broadly similar to the erstwhile provisions contained in Section 12D of the Central Excise Act, 1944.

### 58.4 Related provisions

Section	Description
Section 54	Provision for claiming refund of tax
Section 57	Provisions relating to the amounts to be credited to Consumer Welfare Fund.

### 58.5 FAQ

Q1. How can it be traced whether the amount in the fund is utilised for the welfare of the consumers?

Ans. The Government shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India. From these records, it can be ascertained if the amount in the fund were utilised for the welfare of the consumers.

### 58.6 MCQ

Q1. Proper and separate account and other relevant records in relation to the Fund in prescribed form in consultation with the Comptroller and Auditor-General of India shall be maintained by .....

- (a) the Government
- (b) the authority specified by the Government
- (c) the assessee who is claiming refund
- (d) (a) or (b)

Ans. (d) (a) or (b)