

GOODS & SERVICES TAX / IDT UPDATE – 42

Clarifications on exports related refund issues

The Central Government vide *Circular No. 37/11/2018-GST dated 15th March,2018* has clarified various issues in relation to processing of claims for refund which are discussed below:

1. Non-availment of drawback:

- It has been clarified that the drawback of Central Tax and Integrated Tax should not have been availed while claiming refund of accumulated ITC on zero rated supplies made without payment of tax.
- A supplier availing of drawback only with respect to basic customs duty shall be eligible for refund of unutilized input tax credit of Central tax / State tax / Union territory tax / Integrated tax / Compensation cess under sub section (3) of section 54.
- It is further clarified that refund of eligible credit on account of State tax shall be available even if the supplier of goods or services or both has availed of drawback in respect of central tax.

Comment: (i) Rule 2(a) of C & CE Drawback Rules, 2017 already excludes GST paid on imported material and this clarification does not lay any new tax position. As such, drawback and zero-rated benefit can co-exist and operate simultaneously;

(ii) Rule 96(10) which places a restriction in case claim of IGST refund also implies that IGST refund can co-exist with drawback of non-GST Central duties (NGCDs). Note that refund of IGST arises when exports are on 'payment of IGST' under section 16(3)(b) of IGST Act;

(iii) Further, please note that the restriction in rule 96(10) is to ensure that the domestic Supplier and Exporter/Deemed-Exporter cannot both claim refund (language appears to place an embargo on refund to exporter);

48/2017-CT	Notifies deemed exports	Supplier to claim refund due to 'rate inversion' in his hands. As no refundable taxes paid by deemed-exporter, no refund remains to be availed
40/2017-CT (R)	Specifies CGST of 0.05% on supply to deemed exports	
41/2017-Int. (R)	Specifies IGST of 0.1% on supply to deemed exports	
78/2017-Cus.	Exempts IGST on imports	No refund since no IGST paid
79/2017-Cus.	Exempts IGST on imports	

(iv) As clarified in para 13.2 of this circular, the GST at 0.5%/0.1% in case of supplies to Merchant Exporters causing 'rate inversion' in the hands of Supplier, while the Supplier is eligible to refund of relatable ITC, the ME is eligible to ITC of the (nominal rates of) GST paid;

(v) Please also note that NGCDs are neutralized through drawback, all GSTs are neutralized through zero-rated supply as clarified here. It is therefore clear that SGST is refundable vide zero-rated supply facility without being affected by drawback provisions.

2. Amendment through Table 9 of GSTR-1:

In this it has been clarified that if a taxpayer has committed an error while entering the details of an invoice / shipping bill / bill of export in Table 6A or Table 6B of FORM GSTR-1 due to which refund claims are not being processed, so now taxpayer can rectify the same in Table 9 of FORM GSTR-1 in order to get the refund.

Comment: Rectification does not limit the number of times such rectification may be made. It is prudent to ensure that the correct amounts are reflected in Table 9 of GSTR-1 so as to facilitate refund claims.

3. Exports without LUT:

It has been clarified that the facility for export under LUT may be allowed on *ex post facto* basis taking into accounts the facts and circumstances of each case.

Comment: While an ex post facto filing of LUT greatly undermines the prescriptions of section 16(3)(a) of IGST Act, as it is a beneficial circular, trade may avail this relaxation. This clarification must not be assumed to apply to all 'pre-conditions' of a technical nature in GST. LUTs must nevertheless be filed at least post facto. Failure to file LUT does not avail this procedural relaxation.

4. Exports after specified period:

It has been reported that the exporters have been asked to pay integrated tax where the goods have been exported but not within 3 months from the date of the issue of the invoice for export. In this regard, it is emphasized that exports have been zero rated under the Integrated Goods and Services Tax Act, 2017 (IGST Act) and as long as goods have actually been exported even after a period of three months, payment of integrated tax first and claiming refund at a subsequent date should not be insisted upon.

Therefore, in such cases, the jurisdictional Commissioner may consider granting extension of time limit for export as provided in the said sub-rule on post facto basis keeping in view the facts and circumstances of each case. The same principle should be followed in case of export of services.

Comment: This is a significant clarification where, merely because technical aspects are not complied, it does not alter the basic character of the export rendering it a taxable supply. Also, this clarification would not be applicable in case of 'export of services' even if it is an export by way lease of goods.

5. Deficiency memo:

In this connection, a clarification has been provided that once an applicant has been communicated the deficiencies in respect of a particular application, the applicant shall furnish a fresh refund application after rectification of such deficiencies and once an application has been submitted afresh, pursuant to a deficiency memo, the proper officer will not serve another deficiency memo with respect to the application for the same period, unless the deficiencies pointed out in the original memo remain unrectified, either wholly or partly, or any other

substantive deficiency is noticed subsequently.

Comment: Care should be taken to resolve all deficiencies in order for any refund claim or other application to be legally recognized as having been filed. With this clarification that further deficiencies will not be issued, ensuring that all deficiencies are satisfactorily resolved in imperative to preserve validity of refund claims/applications filed.

6. Self-declaration for non-prosecution:

In terms of Notification No. 37/2017-CT dated 4th October, 2017, the facility of export under LUT is available only to those who have not been prosecuted for any offence under the CGST Act or the IGST Act for which a person intending to export under LUT is required to give a self-declaration at the time of submission of LUT that he has not been prosecuted. In this regard it has been clarified that requirement is already satisfied in case of exports under LUT and asking for self-declaration with every refund claim where the exports have been made under LUT is not warranted.

Comment: Self-declaration by an authorized signatory of a legal entity may include a declaration that the affirmations in the declaration are from extant records of the entity and not personal knowledge.

7. Refund of transitional credit:

As per section 54 Refund of unutilized input tax credit availed on inputs and input services during the relevant period is allowed. In this regard it has been clarified that the transitional credit pertains to duties and taxes paid under the existing laws viz., under Central Excise Act, 1944 and Chapter V of the Finance Act, 1994, the same cannot be said to have been availed during the relevant period and thus, cannot be treated as part of 'Net ITC' therefore, not refundable.

Comment: Apprehension of industry that transitional credits will not be reckoned as 'net ITC' for claiming GST refund is not settled. All refunds under earlier laws must be claimed under earlier laws but if those credits have transitioned under section 140(1), except by utilization or rebate claim, no other refund mechanism would be available.

8. Discrepancy between values of GST invoice and shipping bill/bill of export:

In this regard it has been clarified that in case of discrepancy in value of the goods declared in the GST invoice and shipping bill/bill of export than the value in the GST invoice and corresponding shipping bill / bill of export should be examined and the lower of the two values should be sanctioned as refund.

Comment: This clarification brings to light the practice that was common under Central Excise for 'assessable value' to be different from 'commercial value'. Invoice under section 31 would be for 'assessable value' which can be different from 'commercial value'. Clue can be taken from here for issuing Tax Invoice for exchange and barter transactions and for supplies where consideration is in non-monetary form. Tax Invoice is required in all these cases even though no 'price' may exist.

9. Refund of taxes paid under existing laws:

- Section 142 of the CGST Act provides that refunds of tax/duty paid under the existing law shall be disposed of in accordance with the provisions of the existing law. It is observed that certain taxpayers have applied for such refund claims in FORM GST RFD-01A also. In this regard, it has been advised through this circular to reject such applications and pass a rejection order in FORM GST PMT-03 and communicate the same on the common portal in FORM GST RFD-01B.
- Furthermore, it has been clarified that the amount arising out of refund claims under existing laws shall be refunded in cash only. Also, it should be insured that no refund of the amount of CENVAT credit is granted in case the said amount has been transitioned under GST.

10. Filing frequency of Refunds:

In this regard, it is hereby clarified that the exporter, at his option, may file refund claim for one calendar month / quarter or by clubbing successive calendar months / quarters. The calendar month(s) / quarter(s) for which refund claim has been filed, however, cannot spread across different financial years.

Comment: This is a welcome and much awaited clarification (which may soon be permitted on the portal). In a month where there is no ETO, taxable persons may carry forward ITC in the following quarter and file a consolidated refund for the 'net ITC of quarter' and 'ETO/TTO of quarter'. Care should be taken not to skip any month and maintain refund claims consecutively.

11. BRC / FIRC for export of goods:

In case of export of goods, realization of consideration is not a pre-condition. therefore it is clarified that, insistence on proof of realization of export proceeds for processing of refund claims related to export of goods has not been envisaged in the law and should not be insisted upon.

Comment: Another welcome clarification but this applies only in respect of refund claims relating to export of 'goods' and not services.

12. Supplies to Merchant Exporters:

It is clarified that the benefit of supplies at concessional rate is subject to certain conditions and the said benefit is optional and the goods may be procured at the normal applicable tax rate. It is also clarified that the supplier who supplies goods at the concessional rate is also eligible for refund on account of inverted tax structure as per the provisions of section 54 of the CGST Act.

Comment: It must be ensured that there is no duplication of claims and suitable documentary proof must be provided by the claimant of the refund that the counter party has not claimed refund.

13. Requirement of invoices for processing of claims for refund:

A list of documents required for processing the various categories of refund claims on exports is provided in the Table below. Apart from the documents listed in the Table below, no other documents should be called for from the taxpayers, unless the same are not available with the

officers electronically:

Table	
Type of Refund	Documents
Export of Services with payment of tax (Refund of IGST paid on export of services)	<ul style="list-style-type: none">• Copy of FORM RFD-01A filed on common portal• Copy of Statement 2 of FORM RFD-01A• Invoices w.r.t. input, input services and capital goods• BRC/FIRC for export of services• Undertaking / Declaration in FORM RFD-01A
Export (goods or services) without payment of tax (Refund of accumulated ITC of IGST / CGST / SGST / UTGST / Cess)	<ul style="list-style-type: none">• Copy of FORM RFD-01A filed on common portal• Copy of Statement 3A of FORM RFD-01A generated on common portal• Copy of Statement 3 of FORM RFD-01A• Invoices w.r.t. input and input services• BRC/FIRC for export of services• Undertaking / Declaration in FORM RFD-01A

* These instructions shall apply to exports made on or after 1st July, 2017. It is also advised that refunds may not be withheld due to minor procedural lapses or non-substantive errors or omission.

Division of assesses under GSTN

The division of assesses between Centre and State is decided by the Centre and State Governments. GSTN got an application developed using which Central and State tax authorities have uploaded the data on allocation of migrated taxpayers in the GST System database. As on 8th March, 2018 data on division of 60,89,534 migrated taxpayers has been entered into GST System.

In order to ensure single interface for assesses under GST, the State Level Committees comprising of Chief Commissioner/ Commissioner of Central Tax and Commissioner of State tax have assigned the taxpayers to be under either the Central Tax or State Tax administration based on the turnover of the assesses on a proportionate basis. The assesses having turnover above Rs. 1.5 crores are to be assigned in the ratio of 50:50 between the Centre and the respective State while those having turnover less than Rs. 1.5 Crores have to be assigned in the ratio of 10:90 between the Centre and the respective State.

No choice has been given to assesses to opt for a particular tax administration i.e. Centre and State.

(Release ID :177361)

Input Tax Refund to Exporters

Government has decided to speed up input tax refund to exporters. As per rule 91 of CGST Rules, 2017, ninety per cent of the refund amount claimed shall be granted on a provisional basis within a period not exceeding seven days from the date of acknowledgement of the refund claim. Further, as per section 54(7) of the CGST Act, 2017, the final order for granting refund shall be issued within sixty days from the date of receipt of the complete

application. Out of total taxpayers under GST, 64% were also registered under previous tax regime. No specific study has been undertaken on the impact of GST transition.

64% of the total taxpayers registered under GST have transitioned from the previous tax regime to GST as on 2nd March, 2018.

The processing of refund claim is being done after the claimant has filed the GST return and the grant of the refund shall be within sixty days from the date of receipt of the complete application.

(Release ID :177360)

GST Export Refunds

It has been noticed that at regular intervals, unverified estimates of pending GST refunds on account of exports are published in the print media or put forward by various trade bodies. These figures are highly speculative and mostly inaccurate. It is a fact that while a number of exporters have not been able to get the export refunds so far others have been granted refunds. In order to overcome the causes of the delay in sanctioning of refunds, Government has taken various steps, which includes amendments in the rules, changes in the business procedures of common portal and customs automated system to address the systemic issues. Many of the errors plaguing the claims for refunds are on account of inadequate familiarisation of the exporters with the GST laws and data entry errors in the various GSTRs / forms.

Government has carried out outreach programmes by issuing guidance circulars, advisories, FAQs, advertisements etc. and also provided an alternative procedure involving manual interface where the errors could not be corrected online. The efforts are beginning to show positive results.

So far more than Rs 10, 000 Crore has already been sanctioned by CBEC and States. A standard operating procedure applicable to both Central and State GST has been put in place by virtue of various Circulars and clarifications issued with regard to processing of ITC refund.

GST Council, in its last meeting on 10th March 2018, has directed all States tax authorities to proactively clear refund claims. Exporting community is requested to take benefit of this fortnight and wholeheartedly come forward to get their errors rectified to enable sanction of refunds.

CBEC has taken an initiative to observe a special drive refund sanction fortnight from 15th to 29th March 2018 on an all India scale for which additional staff and infrastructure has been mobilised. Special refund cells manned by experienced staff is being put in place throughout the country.

Government wants to assure the exporting community that it is keen to see that all their eligible refund claims are considered and sanctioned at the earliest.

(Release ID :177554)

[\[http://pib.nic.in/newsite/erelease.aspx\]](http://pib.nic.in/newsite/erelease.aspx)

GST Portal related

Advisory for change in taxpayer type from SEZ to Regular or Regular to SEZ.

1. Migrated taxpayers who have inadvertently selected themselves as SEZ, can send their requests to become regular on the email: reset.sezflag@gst.gov.in.
2. Taxpayers who have not migrated as SEZ, can send their requests to become SEZ on the email : reset.sezflag@gst.gov.in. Please attach scanned copy of LOA for obtaining registration as SEZ /SEZ developer units.

Comment: Trade may avail this facility swiftly and reciprocate such measures of proactiveness on the part of the Government.

[GSTN]

Suo-moto Cancellation by officials(Model-II States) of registration for Normal Taxpayer

- Facility for Suo Moto Cancellation of registration by the Tax Official, has been enabled on GST Portal.
- This process of cancellation could be initiated by tax official, if registered person has contravened such provisions of the act or the rules made thereunder as may be prescribed or Composition person has not furnished returns for three consecutive tax periods or in other cases as mentioned in Section 29 of the CGST Act, 2017.
- API for Model I States/ CBEC will be released soon.

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