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Timely refund mechanism is essential in tax administration, as it facilitates trade through the release of blocked funds for working capital, expansion and modernization of existing business.

Chapter XI – Refunds (Section 54 to 58) of the CGST Act, 2017

Chapter X – Refund (Rule 89 to 97A) of the CGST Rules, 2017

Section 15 of IGST Act, 2017 and Sec 16 of the IGST Act, 2017

As per explanation (1) of Sec 54 of the CGST Act, the term “Refund” **INCLUDES**

(a)

- Refund of tax paid on **zero-rated supplies** of goods or services or both or
- Refund of tax paid on **inputs or input services (not capital goods)** used in making such **zero-rated supplies**, or

(b)

- Refund of tax on the supply of **goods** regarded as **deemed exports**, or

(c)

- Refund of **unutilised input tax credit** as provided under sub-section (3).

Refund of Accumulated ITC

Section 54(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any **tax period**:

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

(i) zero rated supplies made without payment of tax; **(Rule 89(4))**

(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: **(Rule 89(5))**

Provided further that no refund of unutilised 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.

Timely refund mechanism is essential in tax administration, as it facilitates trade through the release of blocked funds for working capital, expansion and modernization of existing business.

Chapter XI – Refunds (Section 54 to 58) of the CGST Act, 2017

Chapter X – Refund (Rule 89 to 97A) of the CGST Rules, 2017

Section 15 of IGST Act, 2017 and Sec 16 of the IGST Act, 2017

Sec 16. (1) “zero rated supply” means any of the following supplies of goods or services or both, namely:—

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the CGST Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:—

(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.

Situations leading to Refund Claims

1. Export/supply to SEZ developer/unit **on payment of IGST** – In case where goods and/or services are exported or, goods and/or services are supplied to an SEZ developer/unit, on payment of IGST, subject to such conditions, safeguards and procedure as may be prescribed, refund of such IGST paid on goods and/or services supplied is available **(Sec 16(3)(b) of IGST Act)**

16(3)(b) of IGST Act - A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:—

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.

2. **Refund of unutilized ITC** – In case of **export/supply to SEZ developer/unit without payment of IGST or inverted duty structure**, refund of unutilized ITC is available. **(Sec 16(3)(a) of IGST Act)(Sec 54(3))**

16(3)(a) of IGST Act - A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:—

(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or

Sec 54(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Situations leading to Refund Claims

3. Refund of tax paid on the supply of goods regarded as **deemed exports** may be claimed. [\(Explanation 1 to Sec 54\)](#)
[Explanation 1 to Sec 54](#) - “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 unutilised input tax credit as provided under sub-section (3).

4. **Refund of any balance in the electronic cash ledger** after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made there under may be claimed. [\(sec 49\(6\)\)](#)

[Sec 49\(6\)](#) The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be **refunded** in accordance with the provisions of section 54.

5. **Taxes transferred as per section 49(10)**[\(Sec 49\(10\)\)](#)

[Sec 49\(10\)](#) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for integrated tax, central tax, State tax, Union territory tax or cess, in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be **deemed** to be a refund from the electronic cash ledger under this Act.

Situations leading to Refund Claims

6. Refund on account of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued. **(Tax paid on advance payment) (Sec 31(3)(e))**

Sec 31(3)(e) where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a **refund voucher** against such payment;

7. Refund of tax wrongly collected and paid to the Government (i.e. CGST & SGST paid by treating the supply as intra-state supply which is subsequently held as inter-state supply and vice-versa) **(Sec 77 of CGST Act & Sec 19 of IGST Act)**

Sec 77 (1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.

Situations leading to Refund Claims

Sec 19 of IGST Act (1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.

8. Tax becomes refundable as a consequence of judgement, decree, order or direction of the Appellate Authority, Appellate Tribunal or any Court. **(Sec 54(8)(e))**

Sec 54(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—

(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

9. On finalization of provisional assessment, if any tax becomes refundable to taxpayer (on account of assessed tax on final assessment being less than the tax deposited by the taxpayer) **(Sec 60(5))**

Sec 60(5) Where the registered person is entitled to a **refund** consequent to the order of final assessment under sub-section (3), subject to the provisions of sub-section (8) of section 54, interest shall be paid on such refund as provided in section 56.

Situations leading to Refund Claims

10. Refund of taxes on purchase made by UN bodies or embassies etc. [\(Sec 55\)](#)

[Sec 55.](#) The Government may, on the recommendations of the Council, by notification, specify any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation 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.

11. Refund to CTP or NRTP [\(Sec 54\(13\)\)](#)

[Sec 54\(13\)](#) 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](#).

12. Refund of the IGST paid by tourist leaving India on any supply of goods taken out of India by him [\(Sec 15 of IGST Act\)](#)

[Sec 15 of IGST Act, 2017](#) The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be **refunded** in such manner and subject to such conditions and safeguards as may be prescribed.

Explanation.—For the purposes of this section, the term “tourist” means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

Situations leading to Refund Claims

S.No.	Particulars	FORM NO.
1A.	Refund of tax paid on Export of Goods on payment of IGST	Shipping Bill
1B.	Refund of tax paid on Export of Services on payment of IGST	FORM GST RFD-01
1C.	Refund of tax paid on supplies made to SEZ Unit/SEZ Developer with payment of tax	FORM GST RFD-01
2A.	Refund of unutilised ITC on account of exports without payment of tax	FORM GST RFD-01
2B.	Refund of unutilised ITC on account of supplies to SEZ Unit/SEZ Developer without payment of tax	FORM GST RFD-01
2C.	Refund of unutilised ITC on account of accumulated ITC due to inverted tax structure.	FORM GST RFD-01
3A.	Refund to supplier of tax paid on deemed export supply of goods	FORM GST RFD-01
3B.	Refund to recipient of tax paid on deemed export supply of goods	FORM GST RFD-01
4.	Refund of excess balance in the electronic cash ledger	FORM GST RFD-01
5.	Taxes transferred as per section 49(10)	FORM GST RFD-01
6.	Refund on account of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued. (tax paid on advance payment) (Refund of excess payment of tax)	FORM GST RFD-01
7.	Refund of tax wrongly collected and paid to the Government (i.e. CGST & SGST paid by treating the supply as intra-state supply which is subsequently held as inter-state supply and vice-versa)	FORM GST RFD-01

Situations leading to Refund Claims

S.No.	Particulars	FORM NO.
8.	Tax becomes refundable as a consequence of judgement, decree, order or direction of the Appellate Authority, Appellate Tribunal or any Court	FORM GST RFD-01
9.	On finalization of provisional assessment, if any tax becomes refundable to taxpayer (on account of assessed tax on final assessment being less than the tax deposited by the taxpayer)	FORM GST RFD-01
10.	Refund of taxes on purchase made by UN bodies or embassies etc.	FORM GST RFD-10
11.	Refund to CTP or NRTP	FORM GST RFD-01
12.	Refund of the IGST paid by tourist leaving India on any supply of goods taken out of India by him	No form

Time Limit within which refund claim can be filed (Sec 54(1) + Expn. 2 to Sec 54)

Sec 54(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 **2 years** from the **relevant date** in such form and manner as may be **prescribed (Rule 89(1))**:

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

S.No.	Cases	Relevant Date
1.	In case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs/input services used in such goods and	
	(i) Goods are exported by sea or air	Date on which the ship or the aircraft in which such goods are loaded, leaves India
	(ii) Goods are exported by land	Date on which such goods pass the frontier
	(iii) Goods are exported by post	Date of dispatch of goods by the Post office concerned to a place outside India.

Time Limit within which refund claim can be filed (Sec 54(1) + Expn. 2 to Sec 54)

SN	Cases	Relevant Date
2.	In 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, and	
	(i) The supply of services had been completed prior to the receipt of such payment	Date of receipt of payment in convertible foreign exchange or in Indian rupees wherever permitted by the RBI
	(ii) Payment for the services had been received in advance prior to the date of issue of the invoice	Date of issue of invoice
3.	In case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods	Date on which the return relating to such deemed exports is furnished
4.	Where tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal/any court	Date of communication of such judgement, decree, order or direction
5.	In case of refund of unutilised ITC in case zero-rated supplies without payment of tax or on account of inverted duty structure	End of the Financial Year in which such claim for refund arises. Due date for furnishing of return under Section 39 for the period in which such claim for refund arises. (As amended vide CGST Amendment Act, 2018)
6.	In the case where tax is paid provisionally under this Act/rules made thereunder	Date of adjustment of tax after the final assessment thereof
7.	In the case of a person, other than the supplier	Date of receipt of goods or services or both by such person
8.	Any other case	Date of payment of tax

Time Limit within which refund claim can be filed (Sec 54(1) + Expn. 2 to Sec 54)

Clarifications through Circular No. 166/22/2021-GST dated 17th Nov, 2021 –

Issue - Whether the provisions of subsection (1) of section 54 of the CGST Act regarding time period, within which an application for refund can be filed, would be applicable in cases of refund of excess balance in electronic cash ledger?

Clarification - No, the provisions of sub-section (1) of section 54 of the CGST Act regarding time period, within which an application for refund can be filed, would not be applicable in cases of refund of excess balance in electronic cash ledger.

Issue - Whether relevant date for the refund of tax paid on supplies regarded as deemed export by recipient is to be determined as per clause (b) of Explanation (2) under section 54 of CGST Act and if so, whether the date of return filed by the supplier or date of return filed by the recipient will be relevant for the purpose of determining relevant date for such refunds?

Clarification - It is clear that clause (b) of Explanation (2) under section 54 of the CGST Act is applicable for determining relevant date in respect of refund of amount of tax paid on the supply of goods regarded as deemed exports, irrespective of the fact whether the refund claim is filed by the supplier or by the recipient. Further, as the tax on the supply of goods, regarded as deemed export, would be paid by the supplier in his return, therefore, the relevant date for purpose of filing of refund claim for refund of tax paid on such supplies would be the date of filing of return, related to such supplies, by the supplier.

Time Limit within which refund claim can be filed (Sec 54(1) + Expn. 2 to Sec 54)

Clarifications through Circular No. 166/22/2021-GST dated 17th Nov, 2021 –

Issue - Whether refund of TDS/TCS deposited in electronic cash ledger under the provisions of section 51 /52 of the CGST Act can be refunded as excess balance in cash ledger?

Clarification - The amount deducted/collected as TDS/TCS by TDS/ TCS deductors under the provisions of section 51 /52 of the CGST Act, as the case may be, and credited to electronic cash ledger of the registered person, is equivalent to cash deposited in electronic cash ledger. It is not mandatory for the registered person to utilise the TDS/TCS amount credited to his electronic cash ledger only for the purpose for discharging tax liability. The registered person is at full liberty to discharge his tax liability in respect of the supplies made by him during a tax period, either through debit in electronic credit ledger or through debit in electronic cash ledger, as per his choice and availability of balance in the said ledgers.

Any amount, which remains unutilized in electronic cash ledger, after discharge of tax dues and other dues payable under CGST Act and rules made thereunder, can be refunded to the registered person as excess balance in electronic cash ledger in accordance with the proviso to sub-section (1) of section 54, read with sub-section (6) of section 49 of CGST Act.

Time Limit within which refund claim can be filed (Sec 54(1) + Expn. 2 to Sec 54)

The government has notified through NN 13/2022-CT dated 5-7-2022, this notification has been made deemed to be effective from 1-3-2020 that –

1. Time period from 1-3-2020 to 28-2-2022 has to be excluded from calculation of the limitation period for filing of refund claim by an applicant under section 54 and 55 of the CGST Act.
 - Meaning thus that the actual balance period of limitation remaining, with effect from **March 01, 2022 that period shall apply.**
 - For example, the period of limitation was to expire on 3-3-2020, only 2 days period was remaining, thus now the last date for filing refund application will be 3-3-2022. As on date of notification, this period has already expired and will not be of any help to such registered person.
 - **As we have seen in the above example, this notification will be helpful for registered person whose period of limitation expires on or after 5-7-2020 till 28-2-2022.**

Application for refund claim (Rule 89(1))

- Any person, **except** the persons covered under notification issued under section 55,
- claiming refund of any tax, interest, penalty, fees or any other amount paid by him, **other than refund of integrated tax paid on goods exported out of India**,
- may file [**subject to the provisions of rule 10B**] an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

[Words in brackets inserted vide NN 35/2021-CT, dt 24-9-2021, w.e.f. 1-1-2022]

Provided that any claim for refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 may be made through the return furnished for the relevant tax period in FORM GSTR-3 or FORM GSTR-4 or FORM GSTR-7***, as the case may be:

Note –

1. Refund in general cases – FORM GST RFD-01
2. Refund of IGST on goods exported out of India on payment of IGST – Shipping bill filed by exporter is itself treated as a refund claim.
3. *** Presently, the application for refund of balance in the Electronic Cash Ledger is also being filed in Form **RFD-01**. While filing refund application, the applicant needs to select the reason as **‘Refund on account of excess balance in cash ledger’**. Thereafter, the balance amount available in Electronic Cash Ledger is auto-populated in said refund application. The applicant enters the amount of refund to be claimed and Electronic Cash Ledger is debited for the amount claimed as refund.

Application for refund claim (Rule 89(1))

Provided further that **in respect of supplies to a SEZ unit or a SEZ developer**, the application for refund shall be filed by the –

- (a) supplier of goods after such goods have been admitted in full in the SEZ for authorised operations, as endorsed by the specified officer of the Zone;
- (b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone:

Provided also that in respect of supplies regarded as **deemed exports**, the application may be filed by, -

- (a) the recipient of deemed export supplies; or
- (b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund.

Provided also that refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him***.

Explanation. — For the purposes of this sub-rule, “specified officer” means a “specified officer” or an “authorised officer” as defined under rule 2 of the Special Economic Zone Rules, 2006 [**Explanation inserted vide NN 14/2022-CT, w.e.f. 5-7-2022**]

Application for refund claim (Rule 89(1))

Clarifications in respect of refund claim by recipient of Deemed Export Supply [Circular No. 147/03/2021-GST, dt 12-3-2021]

There is no restriction under 3rd proviso to Rule 89(1) of CGST Rules, 2017 on recipient of deemed export supply, claiming refund of tax paid on such deemed export supply, on availment of ITC on the tax paid on such supply. Therefore, the para 41 of Circular No. 125/44/2019-GST dated 18.11.2019 is modified to remove the restriction of non-availment of ITC by the recipient of deemed export supplies on the invoices, for which refund has been claimed by such recipient.

The third proviso to rule 89(1) of the CGST Rules allows either the recipient or the supplier to apply for refund of tax paid on such deemed export supplies. In case such refund is sought by the supplier of deemed export supplies, the documentary evidences as specified in notification No. 49/2017- Central Tax dated 18.10.2017 are also required to be furnished which includes an undertaking that the recipient of deemed export supplies shall not claim the refund in respect of such supplies and shall not avail any input tax credit on such supplies. Similarly, in case the refund is filed by the recipient of deemed export supplies, an undertaking shall have to be furnished by him stating that refund has been claimed only for those invoices which have been detailed in statement 5B for the tax period for which refund is being claimed and **the amount does not exceed the amount of input tax credit availed in the valid return filed for the said tax period**. The recipient shall also be required to declare that the supplier has not claimed refund with respect to the said supplies.

Application for refund claim (Rule 89(1))

Clarifications in respect of Refund claimed by the recipients of supplies regarded as deemed export [Circular No. 172/04/2022-GST, dt 6-7-2022]

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

Clarification - The refund in respect of deemed export supplies is the refund of tax paid on such supplies. However, the recipients of deemed export supplies were facing difficulties on the portal to claim refund of tax paid due to requirement of the portal to debit the amount so claimed from their electronic credit ledger. Considering this difficulty, the tax paid on such supplies, has been made available as ITC to the recipients vide Circular No. 147/03/2021-GST dated 12.03.2021 only for enabling them to claim such refunds on the portal. The ITC of tax paid on deemed export supplies, allowed to the recipients for claiming refund of such tax paid, is not ITC in terms of the provisions of Chapter V of the CGST Act, 2017. Therefore, the **ITC so availed by the recipient of deemed export supplies would NOT be subjected to provisions of Section 17 of the CGST Act, 2017.**

Application for refund claim (Rule 89(1))

Clarifications in respect of Refund claimed by the recipients of supplies regarded as deemed export [Circular No. 172/04/2022-GST, dt 6-7-2022]

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

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

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

Application for refund claim under Section 77 (Rule 89(1A))

Rule 89(1A) Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force.]

[Sub-rule inserted vide NN 35/2021-CT, dt 24-9-2021, w.e.f. 24-9-2021]

Application for refund claim under Section 77 (Rule 89(1A))

CBIC through Circular No. 162/18/2021-GST dated 25th Sept, 2021 has clarified the meaning of word “SUBSEQUENTLY HELD” used in Sec 77 of CGST Act, 2017 and Sec 19 of IGST Act, 2017 that –

Para 3.1 Doubts have been raised regarding the interpretation of the term “subsequently held” in the aforementioned sections, and whether refund claim under the said sections is available only if supply made by a taxpayer as inter-State or intra-State, is subsequently held by tax officers as intra-State and inter-State respectively, either on scrutiny/ assessment/ audit/ investigation, or as a result of any adjudication, appellate or any other proceeding or whether the refund under the said sections is also available when the inter-State or intra-State supply made by a taxpayer, is subsequently found by taxpayer himself as intra-State and inter-State respectively.

Para 3.2 In this regard, it is clarified that the term “subsequently held” in section 77 of CGST Act, 2017 or under section 19 of IGST Act, 2017 covers both the cases where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding. Accordingly, refund claim under the said sections can be claimed by the taxpayer in both the above mentioned situations, provided the taxpayer pays the required amount of tax in the correct head.

Application for refund claim under Section 77 (Rule 89(1A))

CBIC through Circular No. 162/18/2021-GST dated 25th Sept, 2021 has clarified application of sub-rule (1A) of rule 89 read with section 77 of the CGST Act / section 19 of the IGST Act is explained through following illustrations –

A taxpayer “A” has issued the invoice dated 10.03.2018 charging CGST and SGST on a transaction and accordingly paid the applicable tax (CGST and SGST) in the return for March, 2018 tax period. The following scenarios are explained hereunder:

Sl. No.	Scenario	Last date for filing the refund claim
1.	Having realized on his own that the said transaction is an inter-State supply, “A” paid IGST in respect of the said transaction on 10.05.2021.	Since “A” has paid the tax in the correct head before issuance of notification No. 35/2021-Central Tax, dated 24.09.2021, the last date for filing refund application in FORM GST RFD-01 would be 23.09.23 (two years from date of notification)
2.	Having realized on his own that the said transaction is an inter-State supply, “A” paid IGST in respect of the said transaction on 10.11.2021 i.e. after issuance of notification No. 35/2021-Central Tax dated 24.09.2021	Since “A” has paid the correct tax on 10.11.2021, in terms of rule 89 (1A) of the CGST Rules, the last date for filing refund application in FORM GST RFD-01 would be 09.11.2023 (two years from the date of payment of tax under the correct head, i.e. integrated tax)
3.	Proper officer or adjudication authority or appellate authority of “A” has held the transaction as an inter-State supply and accordingly, “A” has paid the IGST in respect of the said transaction on 10.05.2019	Since “A” has paid the tax in the correct head before issuance of notification No. 35/2021-Central Tax, dated 24.09.2021, the last date for filing refund application in FORM GST RFD-01 would be 23.09.23 (two years from date of notification)

Application for refund claim under Section 77 (Rule 89(1A))

CBIC through Circular No. 162/18/2021-GST dated 25th Sept, 2021 has clarified application of sub-rule (1A) of rule 89 read with section 77 of the CGST Act / section 19 of the IGST Act is explained through following illustrations –

A taxpayer “A” has issued the invoice dated 10.03.2018 charging CGST and SGST on a transaction and accordingly paid the applicable tax (CGST and SGST) in the return for March, 2018 tax period. The following scenarios are explained hereunder:

Sl. No.	Scenario	Last date for filing the refund claim
4.	Proper officer or adjudication authority or appellate authority of “A” has held the transaction as an inter-State supply and accordingly, “A” has paid the IGST in respect of the said transaction on 10.11.2022 i.e. after issuance of notification No. 35/2021- Central Tax dated 24.09.2021	Since “A” has paid the correct tax on 10.11.2022, in terms of rule 89 (1A) of the CGST Rules, the last date for filing refund application in FORM GST RFD-01 would be 09.11.2024 (two years from the date of payment of tax under the correct head, i.e. integrated tax)

Documentary evidence for filing refund claim (Sec 54(4) read with Rule 89(2))

Sec 54(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**: (In other words, establish that there is NO UNJUST ENRICHMENT)

Provided that where the amount claimed as **refund is less than ₹ 2 Lakhs** , 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**.

***Sec 33.** Notwithstanding anything contained in this Act or any other law for the time being in force, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.

NOTE - Where the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer (Explanation (ii) to Rule 89(2))

Documentary evidence for filing refund claim (Sec 54(4) read with Rule 89(2))

Rule 89(2) The application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in **FORM GST RFD-01**, as applicable, to establish that a refund is due to the applicant, namely:

In case where refund is on account of	Documentary evidence to be submitted
A judgement, decree, order/direction of Appellate Authority, Appellate Tribunal/ any court	the 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 amount specified in sub-section (6) of section 107 (pre-deposit) and sub-section (8) of section 112 (pre-deposit) claimed as refund
Export of Goods, other than electricity	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 , [Other than electricity inserted through NN 14/2022-CT, w.e.f. 5-7-22]
Export of electricity	a statement containing the number and date of the export invoices, details of energy exported, tariff per unit for export of electricity as per agreement, along with the copy of statement of scheduled energy for exported electricity by Generation Plants issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA) under clause (nnn) of subregulation 1 of Regulation 2 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 and the copy of agreement detailing the tariff per unit [clause inserted through NN 14/2022-CT, w.e.f. 5-7-22]
Export of Services	a statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates , as the case may be;

Documentary evidence for filing refund claim (Sec 54(4) read with Rule 89(2))

In case where refund is on account of	Documentary evidence to be submitted	
Supply of goods made to a SEZ unit or a SEZ developer	a statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding the endorsement specified in the second proviso to sub-rule (1)	In addition, a declaration to the effect that tax has not been collected from the SEZ unit/ SEZ developer is also required to be furnished.
Supply of services made to SEZ unit or a SEZ developer	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 SEZ Act, 2005	
Deemed Exports	<p>A statement containing the number and date of invoices along with such other evidence as may be notified in this behalf. This has been notified through Notification No. 49/2017-CT dt 18-10-2017</p> <ol style="list-style-type: none"> 1. Acknowledgment by the jurisdictional Tax officer of the Advance Authorisation (AA) holder or Export Promotion Capital Goods (EPCG) Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said Advance Authorisation (AA) or Export Promotion Capital Goods (EPCG) Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient EOU that said deemed export supplies have been received by it. 2. An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him. 3. An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund. 	

Documentary evidence for filing refund claim (Sec 54(4) read with Rule 89(2))

In case where refund is on account of	Documentary evidence to be submitted
Refund of any unutilised ITC accumulated on account of inverted duty structure	A statement containing the number and the date of the invoices received and issued during a tax period
Finalisation of provisional assessment	the reference number of the final assessment order and a copy of the said order in a case where the refund arises on account of the finalisation of provisional assessment;
Refund u/s 77 i.e. tax wrongly collected and paid to the government	a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;
Excess payment of tax	a statement showing the details of the amount of claim on account of excess payment of tax;

Documentary evidence for filing refund claim (Sec 54(4) read with Rule 89(2))

Rule 89(2)(l) 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, in a case where the amount of refund claimed **does not exceed ₹ 2 Lakhs**
Provided that a declaration is not required to be furnished in respect of the cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54;

Rule 89(2)(m) 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, in a case where the amount of refund claimed **exceeds ₹ 2 Lakhs**:
Provided that a certificate is not required to be furnished in respect of cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54;

Reason of refund (Sec 54(8))	Decl	CA
(a) refund of tax paid on exports of goods or services or both or on inputs or input services used in making such exports;	NO	NO
(b) refund of unutilised input tax credit under sub-section (3);	NO	NO
(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; (Tax paid on advance payment)	NO	NO
(d) refund of tax in pursuance of section 77;	NO	NO
(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	YES	YES
(f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.	NO	NO

Documentary evidence for filing refund claim (Sec 54(4) read with Rule 89(2))

Clarifications through Circular No. 166/22/2021-GST dated 17th Nov, 2021 –

Issue - Whether certification/ declaration under Rule 89(2)(l) or 89(2)(m) of CGST Rules, 2017 is required to be furnished along with the application for refund of excess balance in electronic cash ledger?

Clarification - No, furnishing of certification/ declaration under Rule 89(2)(l) or 89(2)(m) of the CGST Rules, 2017 for not passing the incidence of tax to any other person is not required in cases of refund of excess balance in electronic cash ledger as unjust enrichment clause is not applicable in such cases.

Acknowledgement of Refund Claim (Rule 90)

- ❑ **Rule 90(1)** Where the **application** relates to a **claim for refund from the electronic cash ledger**, 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 specified in sub-section (7) of section 54 shall be counted from such date of filing.
- ❑ **Rule 90(2)** The **application** for refund, **other than claim for refund from electronic cash ledger**, shall be forwarded to the proper officer who shall, within a **period of 15 days of filing of the said application**, scrutinize the application for its completeness and where the application is found to be complete in terms of **sub-rule (2), (3) and (4) of rule 89**, 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 specified in **section 54(7)** shall be counted from such date of filing.

Sec 54(7) The proper officer shall issue the order under sub-section (5) within **60 days from the date of receipt of application complete in all respects.**

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.

Acknowledgement of Refund Claim (Rule 90)

- ❑ **Rule 90(3)** 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.

- ❑ **Provided** that the time period, from the date of filing of the refund claim in FORM GST RFD-01 till the date of communication of the deficiencies in FORM GST RFD-03 by the proper officer, shall be excluded from the period of two years as specified under sub-section (1) of Section 54, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies. **[Proviso Inserted vide Notification No. 15/2021-CT, dated 18-5-2021, w.e.f. 18-5-2021.]**

- ❑ **Rule 90(4)** Where deficiencies have been communicated in **FORM GST RFD-03** under the SGST Rules, 2017, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under sub-rule (3).

- ❑ **Rule 90(5)** The applicant may, at any time before issuance of provisional refund sanction order in **FORM GST RFD-04** or final refund sanction order in **FORM GST RFD-06** or payment order in **FORM GST RFD-05** or refund withhold order in **FORM GST RFD-07** or notice in **FORM GST RFD-08**, in respect of any refund application filed in **FORM GST RFD-01**, withdraw the said application for refund by filing an application in **FORM GST RFD-01W**. **[Sub-Rule (5) inserted vide Notification No. 15/2021-CT, dated 18-5-2021, w.e.f. 18-5-2021.]**

Acknowledgement of Refund Claim (Rule 90)

- ❑ **Rule 90(6)** On submission of application for withdrawal of refund in **FORM GST RFD-01W**, any amount debited by the applicant from electronic credit ledger or electronic cash ledger, as the case may be, while filing application for refund in **FORM GST RFD-01**, shall be credited back to the ledger from which such debit was made.] [**Sub-Rule (6) inserted vide Notification No. 15/2021-CT, dated 18-5-2021, w.e.f. 18-5-2021.**]

Grant of Provisional Refund (Section 54(6) read with Rule 91)

Sec 54(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, 90% 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.

- ❑ **Rule 91(1)** The provisional refund in accordance with the provisions of sub-section (6) of section 54 shall be granted subject to the **condition** that the person claiming refund has, **during any period of 5 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 existing law where the **amount of tax evaded exceeds ₹ 250 lakhs**.
- ❑ **Rule 91(2)** 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 under sub-rule (1) is due to the applicant in accordance with the provisions of **sub-section (6) of section 54**, 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 7 days from the date of the acknowledgement** under **sub-rule (1) or sub-rule (2) of rule 90**:

Provided that the order issued in **FORM GST RFD-04** shall not be required to be revalidated by the proper officer.

Grant of Provisional Refund (Section 54(6) read with Rule 91)

- ❑ **Rule 91(3)** The proper officer shall issue a **payment order** in **FORM GST RFD-05** for the amount sanctioned under sub-rule (2) 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 on the basis of a consolidated payment advice:
 - ❑ **Provided** that the payment order in **FORM GST RFD-05 shall be required to be revalidated** where the refund has NOT been disbursed within the same financial year in which the said payment order was issued.

- ❑ **Rule 91(4)** The Central Government shall disburse the refund based on the consolidated payment advice issued under sub-rule (3).

Order of Refund (Section 54(5), (7) read with Rule 92)

- ❑ **Sec 54(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**.

- ❑ **However**, in certain specified circumstances, the refundable amount is to be paid to the applicant instead of being credited to the Consumer Welfare Fund (**Sec 54(8)**)

- ❑ **Sec 54(7)** The proper officer shall issue the order under sub-section (5) within 60 days from the date of receipt of application complete in all respects.

- ❑ **Circular No. 125/44/2019-GST, dt 18-11-2019** – Any tax shall be considered to have been refunded only when the amount has been credited to the bank account of the applicant. Accordingly, all tax authorities are advised to issue the final sanction order and the payment order within 45 days of the date of generation of ARN, so that the disbursement is completed within 60 days.

- ❑ **Sec 54(8A)** The Central Government may disburse the refund of the State tax in such manner as may be prescribed. **(Inserted vide The Finance (No. 2) Act, 2019, w.e.f. 1-9-2019)**

Order of Refund (Section 54(5), (7) read with Rule 92)

- ❑ **Disbursal of refunds [Circular No. 125/44/2019-GST, dt 18-11-2019]** – Separate disbursement of refund amounts under different tax heads by different tax authorities, i.e. disbursement of CGST, IGST and Compensation Cess by Central tax officers and disbursement of SGST by State tax officers, was causing undue hardship to the refund applicants. In order to facilitate refund applicants on this account, it has now been decided that for a refund application assigned to a Central tax officer, both the sanction order and the corresponding payment order for the sanctioned refund amount, under all tax heads, shall be issued by the Central tax officer only. Similarly, for refund applications assigned to a State/UT officer, both the sanction order and the corresponding payment order for the sanctioned refund amount, under all tax heads, shall be issued by the State/UT tax officer only.

EXAMINATION OF REFUND APPLICATION AND ISSUE REFUND ORDER

- ❑ **Rule 92(1)** 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, amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable:

- ❑ ~~[Provided that in cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any existing law, an order giving details of the adjustment shall be issued in **Part A of FORM GST RFD-07.**]~~

[Proviso omitted vide NN 15/2021-CT dt 18-5-2021, w.e.f. 18-5-2021]

Note – Earlier, in case where refund is completely adjusted against any outstanding demand, an order giving details of the adjustment was issued. [Proviso to rule 92(1) of the CGST Rules] The said proviso has been omitted. Resultantly, no such order will now be issued.

Order of Refund (Section 54(5), (7) read with Rule 92)

INTRODUCTION OF RULE 92(1A) BY NN 16/2020-CT, W.E.F. 23-3-2020 TO ALLOW FOR THE REFUND TO BE SANCTIONED IN BOTH CASH AND CREDIT IN CASE OF EXCESS PAYMENT OF TAX

Rule 92(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**.

Order of Refund (Section 54(5), (7) read with Rule 92)

ORDER FOR WITHHOLDING REFUND UNDER SEC 54(10) OR SEC 54(11)

- ❑ **Rule 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) or, as the case may be, sub-section (11) of section 54, he shall pass an order in **Part BA of FORM GST RFD-07** informing him the reasons for withholding of such refund.
- ❑ **[Provided that where the proper officer or the Commissioner is satisfied that the refund is no longer liable to be withheld, he may pass an order for release of withheld refund in Part B of FORM GST RFD- 07.] [Part A instead of Part B amended and Proviso inserted vide NN 15/2021-CT dt 18-5-2021, w.e.f. 18-5-2021]**

Note – Proviso to rule 92(2) has been inserted to provide that where the proper officer or the Commissioner is satisfied that the refund is no longer liable to be withheld, he may pass an order for release of withheld refund in prescribed form.

REFUND IS NOT ADMISSIBLE AND ISSUANCE OF NOTICE

- ❑ **Rule 92(3)** Where the proper officer is satisfied, **for reasons to be recorded in writing**, that the whole or any part of the amount claimed as refund is **not admissible** or is not payable to the applicant, he shall issue a **notice** in **FORM GST RFD-08** to the applicant, requiring him to furnish a reply in **FORM GST RFD-09** within a period of **15 days of the receipt of such notice** and after considering the reply, 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 and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed:
- ❑ **Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard.**

Order of Refund (Section 54(5), (7) read with Rule 92)

PAYMENT ORDER OF REFUND TO BE CREDITED TO BANK ACCOUNT OF REGISTERED PERSON

- Rule 92(4)** Where the proper officer is satisfied that the amount refundable under sub-rule (1) or sub-rule (1A) or sub-rule (2) is payable to the applicant under **sub-section (8) of section 54**, he shall make an **order in FORM GST RFD-06** and issue a **payment order in FORM GST RFD-05** for the amount of refund 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 on the basis of a consolidated payment advice

- Provided** that the order issued in **FORM GST RFD-06** shall **NOT** be required to be revalidated by the proper officer:

- Provided further** that the payment order in **FORM GST RFD-05** shall **be required to be revalidated** where the refund has **NOT** been disbursed within the same financial year in which the said payment order was issued.

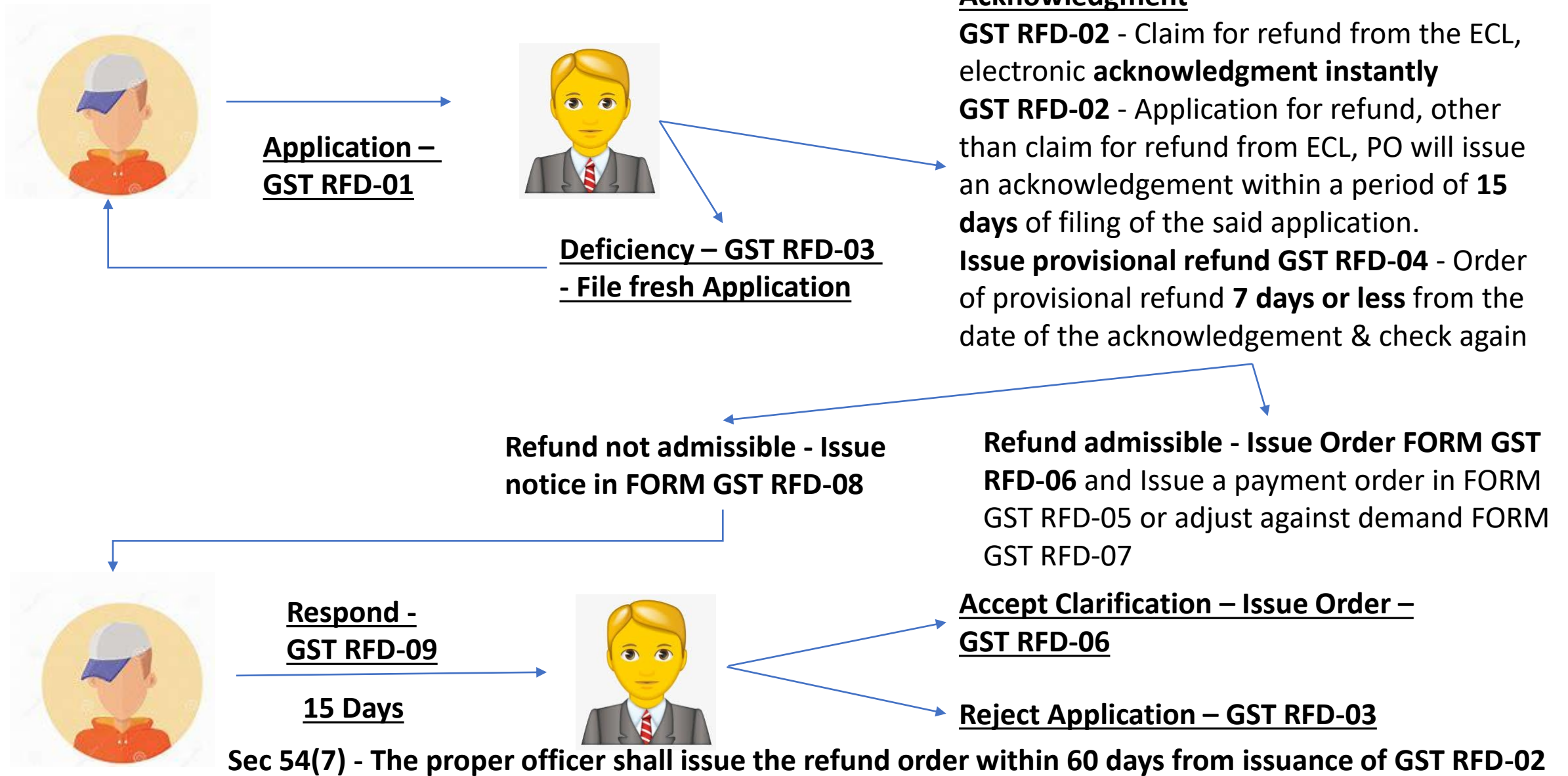
DISBURSAL OF REFUND

- Rule 92(4A)** The Central Government shall disburse the refund based on the consolidated payment advice issued under sub-rule (4).

PAYMENT ORDER OF REFUND TO BE CREDITED TO CONSUMER WELFARE FUND OF REGISTERED PERSON

- Rule 92(5)** Where the proper officer is satisfied that the amount refundable under sub-rule (1) or sub-rule (1A) or sub-rule (2) 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 a payment order in **FORM GST RFD-05**, for the amount of refund to be credited to the Consumer Welfare Fund.

Order of Refund (Section 54(5), (7) read with Rule 92)



Principal of Unjust Enrichment (Section 54(8))

- While the term 'unjust enrichment' is not used anywhere in the CGST Act, the principle is inbuilt within section 54(8)
- Theory of unjust enrichment postulates that only the person who has NOT passed the incidence of tax will be eligible to claim the refund.
- Under unjust enrichment, a presumption is always drawn that the businessman will shift the incidence of tax to the final consumer. This is because GST is an indirect tax whose incidence is to be borne by the consumer. It is for this reason that every refund if sanctioned is first transferred to the Consumer Welfare Fund.
- Every claim of refund made must pass the test of unjust enrichment.
- The test of unjust enrichment will not be applicable only in the following cases as specified in section 54(8)
- In cases other than those enumerated u/s 54(8), for crossing the bar of unjust enrichment, if the refund claim is less than ₹ 2 lakhs, then a self-declaration of the applicant to the effect that the incidence of tax has not been passed to any other person will suffice to process the refund claim.
- In cases other than those enumerated u/s 54(8), for refund claims exceeding ₹ 2 lakh, a certificate from Chartered Accountant/Cost Accountant will have to be given.

Principal of Unjust Enrichment (Section 54(8))

Cases where refundable amount shall be paid to the applicant, instead of being credited to the Consumer Welfare Fund, if such amount is relatable to—

- (a) refund of tax paid on ~~zero rated supplies~~ exports of goods or services or both or on inputs or input services used in making such ~~zero rated supplies~~ exports; **(Substituted vide CGST (Amendment) Act, 2018, w.e.f. 1-2-2019)**
- (b) refund of unutilised input tax credit in case of zero rated supplies or accumulated ITC on account of inverted duty structure.
- (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 (This clause requires CA Certificate or declaration inspite of being a part of Sec 54(8))
- (f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

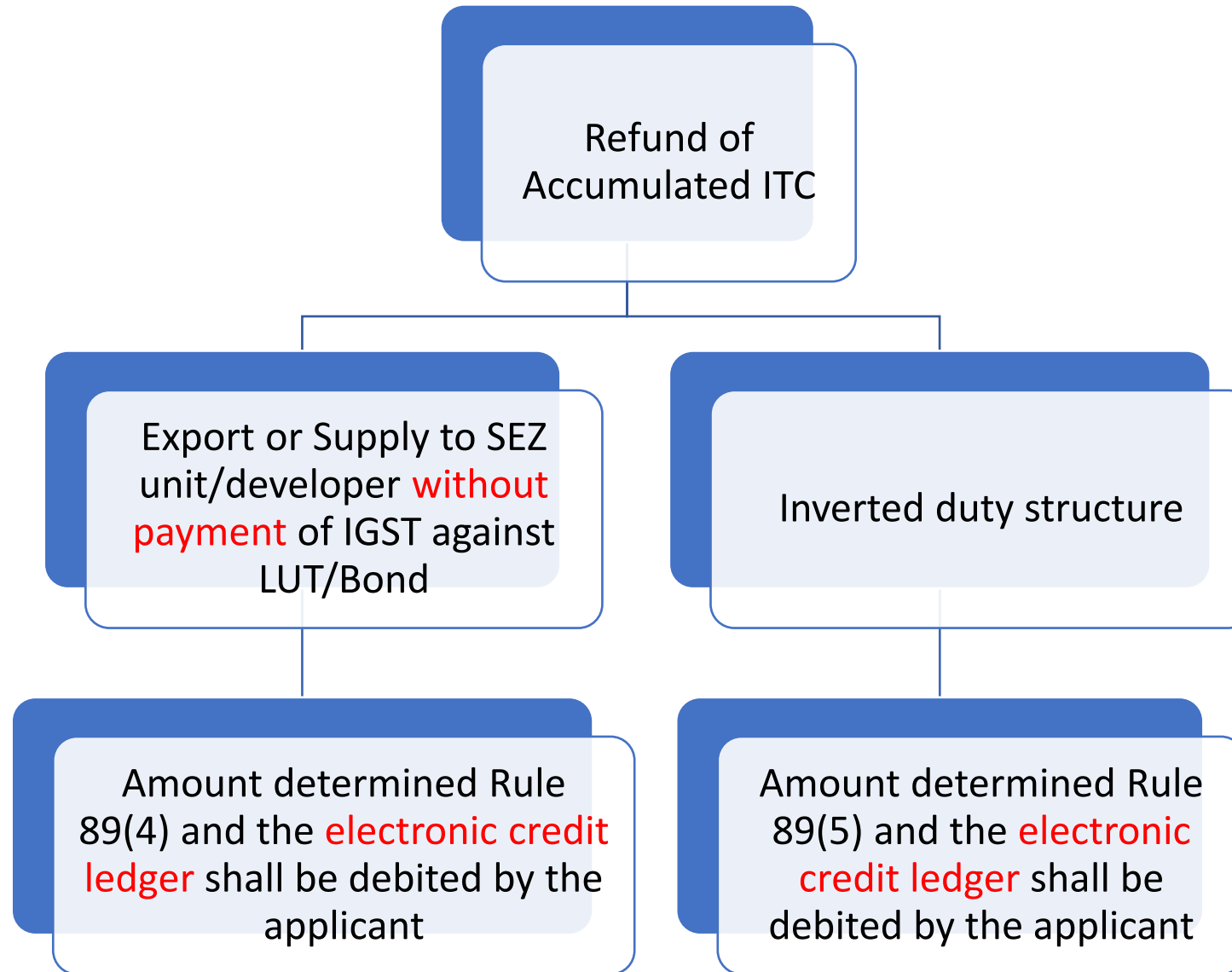
Withholding of Refund Claim (Section 54(10), (11) & (12))

- ❑ **Sec 54(10)** Where any refund is due under 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 existing 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.
- ❑ **Sec 54(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 proceedings 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.
- ❑ **Sec 54(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 6% 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.

Credit of the amount of rejected refund claim (Rule 93)

- ❑ **Rule 93(1)** 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.
- ❑ **Rule 93(2)** Where any **amount claimed as refund is rejected under rule 92**, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in **FORM GST PMT-03**.
- ❑ **Explanation.**– For the purposes of this rule, 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.

Refund of Accumulated ITC (Section 54(3))



Refund of Accumulated ITC (Section 54(3))

Refund of Accumulated ITC

Section 54(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any **tax period**:

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

(i) zero rated supplies made without payment of tax; **(Rule 89(4))**

(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: **(Rule 89(5))**

Provided further that no refund of unutilised 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.

Sec 2(42) of CGST Act, 2017 “**DRAWBACK**” in relation to any goods manufactured in India and exported, means the rebate of duty, tax or cess chargeable on any imported inputs or on any domestic inputs or input services used in the manufacture of such goods; Under Customs, full drawback (BCD, GST etc.) is allowed in case of re-export of imported goods. However, in case of manufacture of goods using duty/tax paid inputs, drawback is allowed only of custom duties and not of IGST or GST Cess paid on import.

Refund of Accumulated ITC (Section 54(3))

Note –

1. A tax period is the period for which return is required to be furnished [Sec 2(106)]
2. The nil-rated/exempted supplies cannot claim benefit of inverted tax structure and therefore, cannot claim benefit of input tax borne by tax. Inverted tax means there is same tax but it is lower than input tax.
3. **No refund in following two cases –**
 1. Refund of unutilised ITC in cases where the goods exported out of India are subjected to export duty:
 2. Refund of ITC, 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.

Thus, if a supplier claims refund of accumulated ITC in case of zero rated supplies without payment of tax, he can avail drawback of only basic custom duty and cannot claim drawback of any of the taxes under GST (CT, IT, ST/UT)

In other words, a supplier availing drawback of only basic customs duty shall be eligible for refund of unutilised ITC of CT/ST/UT/ IT/Compensation Cess under the said provision. It is further clarified that refund of eligible credit on account of State Tax shall be available even if the supplier has availed of drawback in respect of CT **(Circular No. 24/24/2017 GST dt 21-12-2017 and Circular No. 37/11/2018 GST dt 15-3-2018)**
4. **As per explanation (1) of Sec 54 of the CGST Act**, the term “Refund” **INCLUDES**
 - (a) Refund of tax paid on **zero-rated supplies** of goods or services or both or Refund of tax paid on **inputs or input services (not capital goods)** used in making such **zero-rated supplies**, or
 - (b) Refund of tax on the supply of **goods** regarded as **deemed exports**, or
 - (c) Refund of **unutilised input tax credit** as provided under sub-section (3).

Refund of Accumulated ITC (Section 54(3))

Note –

5. **Circular No. 160/16/2021-GST dated 20th Sept, 2021** Whether the first proviso to section 54(3) of CGST / SGST Act, prohibiting refund of unutilized ITC is applicable in case of exports of goods which are having NIL rate of export duty.
- Clarification** - 1. The term 'subjected to export duty' used in first proviso to section 54(3) of the CGST Act, 2017 means where the goods are actually liable to export duty and suffering export duty at the time of export. Therefore, goods in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, cannot be considered to be subjected to any export duty under Customs Tariff Act, 1975.
2. Accordingly, it is **clarified that only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3)** from availment of refund of accumulated ITC. Goods, which are not subject to any export duty and in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, would not be covered by the restriction imposed under the first proviso to section 54(3) of the CGST Act for the purpose of availment of refund of accumulated ITC.

Refund of unutilised ITC of Zero Rated supplies made without payment shall be determined under Rule 89(4)

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

Where -

Adjusted Total Turnover

(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 other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;

(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 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 **[Inserted vide NN 16/2020-CT, w.e.f. 23-3-2020]**

(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 sum total of the value of-

- (a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, **excluding the turnover of services**; and
- (b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, **excluding-**
 - (i) the value of exempt supplies other than zero-rated supplies; and
 - (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.

(F) "**Relevant period**" means the period for which the claim has been filed.

Refund of unutilised ITC of Zero Rated supplies made without payment shall be determined under Rule 89(4)

Following explanation has been added in Rule 89(4) through NN 14/2022-CT, dated 5-7-2022, w.e.f. 5-7-2022

Explanation. – For the purposes of this sub-rule, the value of goods exported out of India shall be taken as –

- (i) the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form, as the case may be, as per the Shipping Bill and Bill of Export (Forms) Regulations, 2017; or
- (ii) the value declared in tax invoice or bill of supply, **whichever is less.**

Refund of unutilised ITC of Zero Rated supplies made without payment shall be determined under Rule 89(4) (Circular No. 147/03/2021-GST, dt 12-3-2021)

- Doubts have been raised as to whether the restriction on turnover of zero-rated supply of goods to 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, imposed by amendment in definition of the “Turnover of zero-rated supply of goods” vide Notification No. 16/2020-Central Tax dated 23.03.2020, would also apply for computation of “Adjusted Total Turnover” in the formula given under Rule 89 (4) of CGST Rules, 2017 for calculation of admissible refund amount.
- “Adjusted Total Turnover” includes “Turnover in a State or Union Territory”, as defined in Section 2(112) of CGST Act.
- As per Section 2(112), “Turnover in a State or Union Territory” includes turnover/ value of export/ zero-rated supplies of goods.
- The definition of “Turnover of zero-rated supply of goods” has been amended vide Notification No.16/2020-Central Tax dated 23.03.2020.
- In view of the above, it can be stated that the same value of zero-rated/ export supply of goods, as calculated as per amended definition of “Turnover of zero-rated supply of goods”, need to be taken into consideration while calculating “turnover in a state or a union territory”, and accordingly, in “adjusted total turnover” for the purpose of sub-rule (4) of Rule 89.
- Thus, the restriction of 150% of the value of like goods domestically supplied, as applied in “turnover of zero-rated supply of goods”, would also apply to the value of “Adjusted Total Turnover” in Rule 89 (4) of the CGST Rules, 2017.

Refund of unutilised ITC of Zero Rated supplies made without payment shall be determined under Rule 89(4) (Circular No. 147/03/2021-GST, dt 12-3-2021)

- **Illustration:** Suppose a supplier is manufacturing only one type of goods and is supplying the same goods in both domestic market and overseas. During the relevant period of refund, the details of his inward supply and outward supply details are shown in the table below:

- Net admissible ITC = Rs. 270

All values in Rs.

Outward Supply	Value per unit	No of units supplied	Turnover	Turnover as per amended definition
Local (Quantity 5)	200	5	1000	1000
Export (Quantity 5)	350	5	1750	1500 (1.5*5*200)
Total			2750	2500

- The formula for calculation of refund as per Rule 89(4) is : Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover
- Turnover of Zero-rated supply of goods (as per amended definition) = Rs. 1500
- Adjusted Total Turnover= Rs. 1000 + Rs. 1500 = Rs. 2500 [and not Rs. 1000 + Rs. 1750] Net ITC = Rs. 270
- Refund Amount = Rs. 1500*270/2500 = Rs. 162

Rule 89(4A) and Rule 89(4B)

Rule 89(4A) In the case of supplies received on which the supplier has availed the benefit of DEEMED EXPORTS (N.No. 48/2017-CT dated the 18th October, 2017) refund of input tax credit, availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.

Rule 89(4B) Where the person claiming refund of unutilised input tax credit on account of zero rated supplies without payment of tax has –

- (a) received supplies on which the manufacturer supplier has availed the benefit of supply of goods to MERCHANT EXPORTERS AT THE CONCESSIONAL RATE OF 0.1% (NNo. 40/2017-CT(R), dated the 23rd October, 2017, or NNo. 41/2017-IT (Rate), dated the 23rd October, 2017, or
- (b) availed the benefit of exemption from IGST and Compensation Cess, for the goods imported by EOU (NNo. 78/2017-Customs, dated the 13th October, 2017), or for the goods imported under Advance Authorisation (AA/EPCG)(NNo. 79/2017-Customs, dated the 13th October, 2017),

the refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.

Inverted duty structure (Rule 89(5))

1. Inverted duty structure means a situation where the rate of tax on inputs is higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies). As a result, the higher tax paid on inputs gets accumulated in the Electronic Credit Ledger of the tax payer
2. Suppliers who supply goods to merchant exporters at the concessional rate of 0.1% [0.05% CGST + 0.05% SGST or 0.1% IGST], under NN 40/2017-CTR dated 23-10-2017/NN 41/2017 ITR dt 23-10-2017, subject to certain conditions specified in the said notification, are also eligible for refund on account of inverted duty structure.
3. Government (using the powers conferred on it clause (ii) of the proviso to Sec 54(3)) has specified goods/services where refund of unutilised ITC on account of inverted duty structure is **NOT** allowed
 1. **Services - Notification No 15/2017 CT (Rate) dated 28 June 2017** – no refund of unutilised input tax credit shall be allowed under sub-section (3) of section 54 of the said CGST Act, in case of supply of **SERVICES** specified in **SUB-ITEM (B) OF ITEM 5 OF SCHEDULE II OF THE CGST ACT.**
 2. **Goods - Notification No. 5/2017-CTR dt 28-6-2017 (as amended)**, placed restriction on refund of accumulated ITC on **FABRICS, RAIL LOCOMOTIVES, RAILWAY OR TRAMWAY COACHES.** It has amended the notification to exclude restriction on fabrics and also issued following circular :
 - **Circular No. 56/30/2018 dt 24-8-2018**, clarification regarding removal of restriction of refund of accumulated ITC on fabrics was issued.
 - **NN 5/2017-CTR has been amended vide NN 9/2022-CTR, w.e.f. 18-7-2022, to include oils like soya-bean oil, ground-nut oil, olive oil, palm oil as additional goods on which benefit of Sec 54(3) will not be available.**
4. However, the aforesaid notification having been issued under clause (ii) of the proviso to Sec 54(3), **restriction on refund of unutilised ITC of GST paid on inputs will not be applicable to zero rated supplies. (Circular No. 18/18/2017 GST dt 16-11-2017)**

Inverted duty structure (Rule 89(5))

5. Application shall be made in **RFD-01** within **2 years** from the due date of furnishing of return under **section 39** for the period in which such claim for refund arises.

Inverted duty structure (Rule 89(5))

$$\text{Refund Amount} = \left\{ \begin{array}{l} \text{Turnover of inverted rated supply of goods and services} \\ \text{Adjusted Total Turnover} \end{array} \right\} \times \text{Net ITC} - \left\{ \begin{array}{l} \text{Tax Payable on such inverted rated supply of goods and services} \\ \text{ITC availed on inputs and input services} \end{array} \right\} \times \text{Net ITC}$$

Explanation:- For the purposes of this sub-rule, the expressions –

(a) “Net ITC” shall mean input tax credit availed on **INPUTS** during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

Other definitions from Rule 89(4)

(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;

Inverted duty structure (Rule 89(5))

$$\text{Refund Amount} = \left\{ \frac{\text{Turnover of inverted rated supply of goods and services}}{\text{Adjusted Total Turnover}} \times \text{Net ITC} \right\} - \left\{ \frac{\text{Tax Payable on such inverted rated supply of goods and services}}{\text{ITC availed on inputs and input services}} \times \text{Net ITC} \right\}$$

(E) “**Adjusted Total Turnover**” means the sum total of the value of-

- a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and
- b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,

excluding-

- (i) the value of exempt supplies other than zero-rated supplies; and
- (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.

(F) “**Relevant period**” means the period for which the claim has been filed. [Definition of Adjusted Total turnover as amended by NN 74/2018-CT dated 31-12-2018][Rule 89(5), as substituted retrospectively by NN 26/2018-CT w.e.f. 1-7-2017]

Circular No. 79/53/2018-GST dt 31-12-2018

(I) Calculation of refund amount for claims of refund of accumulated Input Tax Credit (ITC) on account of inverted duty structure:

Representations have been received stating that while processing the refund of unutilized ITC on account of inverted tax structure, the departmental officers are denying the refund of ITC of GST paid on those inputs which are procured at equal or lower rate of GST than the rate of GST on outward supply, by not including the amount of such ITC while calculating the maximum refund amount as specified in rule 89(5) of the CGST Rules. The matter has been examined and the following issues are clarified:

- a) Refund of unutilized ITC in case of inverted tax structure, as provided in section 54(3) of the CGST Act, is available where ITC remains unutilized even after setting off of available ITC for the payment of output tax liability. Where there are **multiple inputs** attracting different rates of tax, in the formula provided in rule 89(5) of the CGST Rules, the term “**Net ITC**” covers the ITC availed on **all inputs in the relevant period, irrespective of their rate of tax.**

Circular No. 79/53/2018-GST dt 31-12-2018

b) The calculation of refund of accumulated ITC on account of inverted tax structure, in cases where several inputs are used in supplying the final product/output, can be clearly understood with help of the following example:

Particulars	Supplies	ITC
Input A (Applicable GST – 5%)		₹ 25/-
Input B (Applicable GST – 18%)		₹ 360/-
Output Y (Applicable GST – 12%) (Being the only supply during tax period)	₹ 3,000/-	
Total	₹ 3,000/-	₹ 385/-

$$\begin{aligned}
 \text{Refund Amount} &= \left\{ \frac{\text{Turnover of inverted rated supply of goods and services}}{\text{Adjusted Total Turnover}} \times \text{Net ITC} \right\} - \left\{ \frac{\text{Tax Payable on such inverted rated supply of goods and services}}{\text{Net ITC}} \times \frac{\text{ITC available on inputs and input services}}{\text{Net ITC}} \right\} \\
 &= ₹(3,000/3,000 * 385) - 3000*12\% \\
 &= 385 - 360 \\
 &= ₹25 \longrightarrow \text{Maximum Amount to be refunded}
 \end{aligned}$$

Circular No. 79/53/2018-GST dt 31-12-2018

(II) Misinterpretation of the meaning of the term “inputs”:

It has been represented that on certain occasions, departmental officers do not consider ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, as part of Net ITC on the grounds that these are not directly consumed in the manufacturing process and therefore, do not qualify as input. There are also instances where stores and spares charged to revenue are considered as capital goods and therefore the ITC availed on them is not included in Net ITC, even though the value of these goods has not been capitalized in his books of account by the claimant.

In relation to the above, it is clarified that the input tax credit of the GST paid on inputs shall be available to a registered person as long as he/she uses or intends to use such inputs for the purposes of his/her business and there is no specific restriction on the availment of such ITC anywhere else in the GST Act. **The GST paid on inward supplies of stores and spares, packing materials etc. shall be available as ITC** as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the CGST Act. Further, capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.

Circular No. 135/05/2020-GST dt 31-3-2020 substituted vide Circular No. 173/05/2022-GST dt. 6-7-2022

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.

Circular No. 135/05/2020-GST dt 31-3-2020 substituted vide Circular No. 173/05/2022-GST dt. 6-7-2022

- There may however, be cases where though inputs and output goods are same but the output supplies are made under a concessional notification due to which the rate of tax on output supplies is less than the rate of tax on inputs. In such cases, as the rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to supply of goods by the supplier under such concessional notification, the credit accumulated on account of the same is admissible for refund under the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act, other than the cases where output supply is either Nil rated or fully exempted, and also provided that supply of such goods or services are not notified by the Government for their exclusion from refund of accumulated ITC under the said clause.

Latest News Manmade Fibre

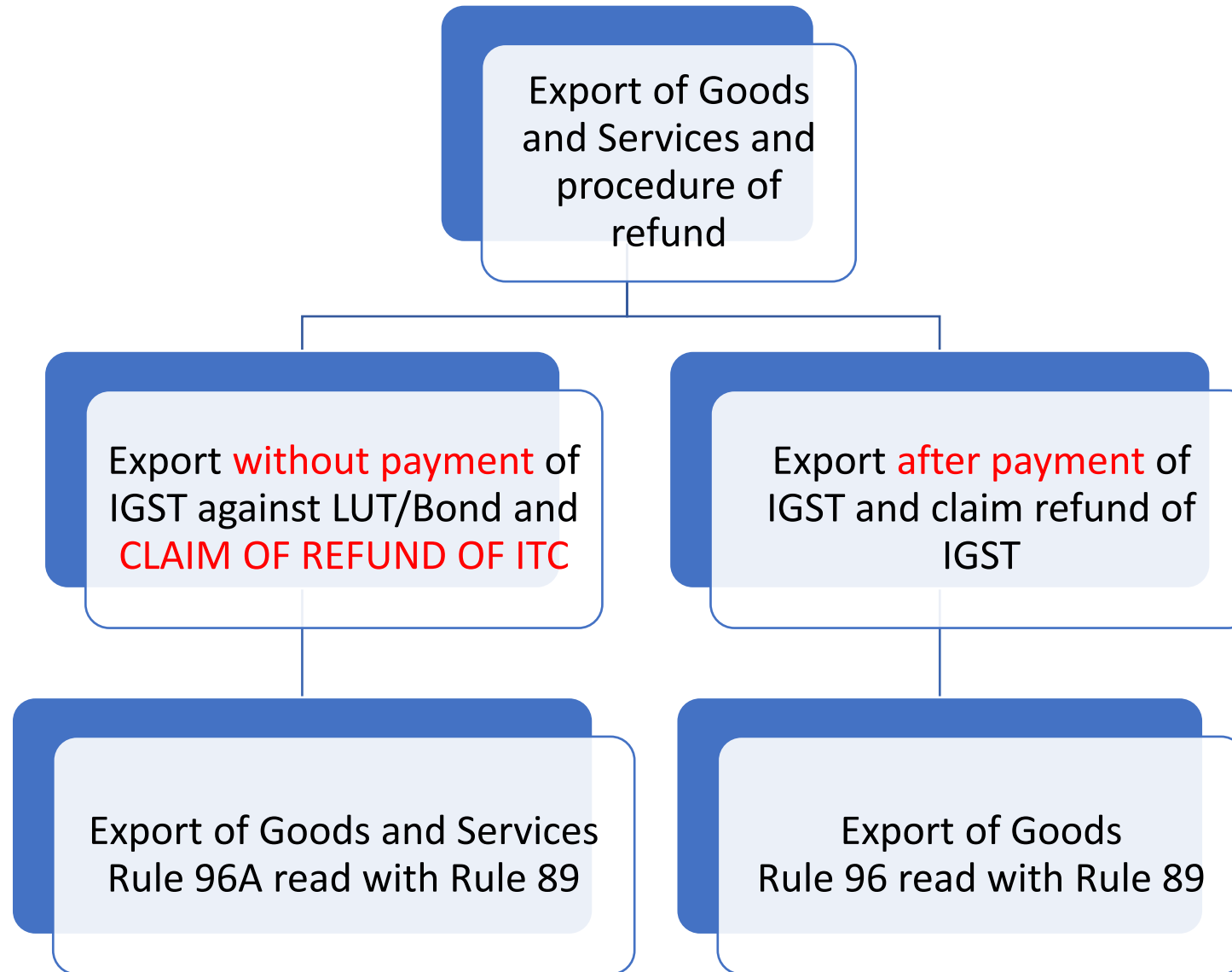
The Textiles & Apparel (T&A) industry was having long pending (first under sales tax then, under VAT and finally under GST regime) demand for removal of inverted tax structure on manmade fibre (MMF) value chain. The GST on MMF, MMF Yarn and MMF Fabrics were 18%, 12% and 5% respectively. The taxation of inputs at higher rates than finished products created build up of credits and cascading costs. It further led to accumulation of taxes at various stages of MMF value chain and blockage of crucial working capital for the industry.

Though there is a provision in GST law to claim the unutilised Input Tax Credit (ITC) as a refund, but there were other complications and resulted more compliance burden. The inverted tax structure caused effective increase in rate of taxation of the sector. The world textiles trade has been moving towards MMF but India was not able to take advantage of the trend as its MMF segment was throttled by inverted tax regime.

This 12% uniform GST rate was likely to contribute positively to the growth of the sector.

But since the rate increase from 5% to 12% was to impact the entire textile industry, except cotton, including readymade garments, and not just MMF value chain, it was believed that the change will make the readymade garments expensive and closure of textile units already rolling under revenue pressures due to COVID-19.

Export under GST – Rules that need to be referred to



Refund on account of export of goods [with payment of tax] [Rule 96]

Rule 96(1) The shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application **shall be deemed to have been filed only when:-**

- (a) the person in charge of the conveyance carrying the export goods duly files a **departure manifest or an export manifest** or an export report covering the number and the date of shipping bills or bills of export; and
- (b) the applicant has furnished a valid return in ~~FORM GSTR-3 or FORM GSTR-3B, as the case may be;~~
 - **Provided** that if there is any mismatch between the data furnished by the exporter of goods in Shipping Bill and those furnished in statement of outward supplies in **FORM GSTR-1**, such application for refund of integrated tax paid on the goods exported out of India shall be deemed to have been filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter;
- (c) the applicant has undergone Aadhaar authentication in the manner provided in rule 10B;

[“a departure manifest or” words inserted by NN 74/2018-CT, dt 31-12-2018 ; clause (c) inserted vide NN 35/2021-CT, dt 24-9-2021, w.e.f. 1-1-2022 ; words omitted and proviso inserted in Rule 96(1)(b) vide NN 14/2022-CT, dt. 5-7-2022, w.e.f. 1-7-2017]

ELECTRONIC TRANSFER OF EXPORT INVOICE FROM FORM GSTR-01 to ICEGATE

Rule 96(2) The details of the relevant export invoices in respect of export of goods 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 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.

Refund on account of export of goods [with payment of tax] [Rule 96]

REFUND CLAIM TO BE PROCESSED BY CUSTOM OFFICER AND CREDIT AMOUNT OF IGST TO BANK ACCOUNT

Rule 96(3) Upon the receipt of the information regarding the furnishing of a valid return in FORM GSTR-3 or FORM GSTR-3B, as the case may be from the common portal, the system designated by the Customs or the proper officer of Customs, as the case may be, shall process the claim of refund in respect of export of goods 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 CLAIM TO BE WITHHELD

Rule 96(4) The claim for refund shall be withheld where,-

- (a) 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
- (b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962; or
- (c) the Commissioner in the Board or an officer authorised by the Board, on the basis of data analysis and risk parameters, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue.

[clause (c) inserted vide NN 14/2022-CT, dt. 5-7-2022, w.e.f. 1-7-2017]

Refund on account of export of goods [with payment of tax] [Rule 96]

INTIMATION ON WITHHOLDING OF REFUND TO COMMISSIONER AND APPLICANT

~~**Rule 96(5)** Where refund is withheld in accordance with the provisions of clause (a) of sub-rule (4), 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.~~

[clause (d) omitted vide NN 14/2022-CT, dt. 5-7-2022, w.e.f. 1-7-2017)

TRANSMISSION OF IGST REFUND CLAIM ON THE PORTAL IN A SYSTEM GENERATED FORM RFD-01 TO JURISDICTION GST AUTHORITIES FOR WITHHOLDING REFUND FOR CLAUSE (a) or CLAUSE (c) of SUB-RULE (4)

Rule 96(5A) Where refund is withheld in accordance with the provisions of clause (a) or clause (c) of sub-rule (4), such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated **FORM GST RFD-01** and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission. **[Sub-rule inserted vide NN**

14/2022-CT, dt. 5-7-2022, w.e.f. 1-7-2017)

Refund on account of export of goods [with payment of tax] [Rule 96]

TRANSMISSION OF IGST REFUND CLAIM ON THE PORTAL IN A SYSTEM GENERATED FORM RFD-01 TO JURISDICTION GST AUTHORITIES FOR WITHHOLDING REFUND FOR CLAUSE (b) of SUB-RULE (4)

Rule 96(5B) Where refund is withheld in accordance with the provisions of clause (b) of sub-rule (4) and the proper officer of the Customs passes an order that the goods have been exported in violation of the provisions of the Customs Act, 1962 (52 of 1962), then, such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as the case may be, electronically through the common portal in a system generated **FORM GST RFD-01** and the intimation of such transmission shall also be sent to the exporter electronically through the common portal, and notwithstanding anything to the contrary contained in any other rule, the said system generated form shall be deemed to be the application for refund in such cases and shall be deemed to have been filed on the date of such transmission. **[Sub-rule inserted vide NN 14/2022-CT, dt. 5-7-2022, w.e.f. 1-7-2017)**

DEALING OF FORM GSTR RFD-01 AS PER R-89

Rule 96(5C) The application for refund in **FORM GST RFD-01** transmitted electronically through the common portal in terms of sub-rules (5A) and (5B) shall be dealt in accordance with the provisions of rule 89.; **[Sub-rule inserted vide NN 14/2022-CT, dt. 5-7-2022, w.e.f. 1-7-2017)**

PROPER OFFICER TO MAKE ORDER ON THE BASIS OF INTIMATION

~~Rule 96(6) Upon transmission of the intimation under sub-rule (5), the proper officer of central tax or State tax or Union territory tax, as the case may be, shall pass an order in **Part AB of FORM GST RFD-07**. [Part A instead of Part B amended vide NN 15/2021-CT dt 18-5-2021, w.e.f. 18-5-2021] [sub-rule omitted vide NN 14/2022-CT, dt. 5-7-2022, w.e.f. 1-7-2017)~~

Refund on account of export of goods [with payment of tax] [Rule 96]

REFUND OF AMOUNT WITHHELD

~~Rule 96(7) Where the applicant becomes entitled to refund of the amount withheld under clause (a) of sub-rule (4), 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** by passing an order in **FORM GST RFD-06** after passing an order for release of withheld refund in **Part B of FORM GST RFD-07.**] [Sub-rule (7) amended vide NN 15/2021-CT dt 18-5-2021, w.e.f. 18-5-2021] [sub-rule omitted vide NN 14/2022-CT, dt. 5-7-2022, w.e.f. **1-7-2017**)~~

Note – As per amended provisions of R-96(7), in case of an applicant who becomes entitled to refund after being withheld, order for release of withheld refund to be passed before passing final refund sanction order.

REFUND OF GOVERNMENT OF BHUTAN

Rule 96(8) The Central Government may pay refund of the integrated tax to the Government of Bhutan on the exports to Bhutan for such class of goods as may be notified in this behalf and where such refund is paid to the Government of Bhutan, the exporter shall not be paid any refund of the integrated tax.

REFUND OF IGST PAID ON EXPORT OF SERVICES UNDER PROVISIONS OF RULE 89 ON FILLING FORM RFD-01

Rule 96(9) The application for refund of integrated tax paid on the services exported out of India shall be filed in **FORM GST RFD-01** and shall be dealt with in accordance with the provisions of **rule 89**

Refund on account of export of goods [with payment of tax] [Rule 96]

SUPPLIES NOT TO BE UNDER RULE 89(4A) AND 89(4B)

Rule 96(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have –

- (i) Received supplies on which the benefit of deemed exports has been availed or
- (ii) Receipt of supplies under benefit of supply of goods to merchant exporters at the concessional rate of 0.1% has been availed, or
- (iii) Availed the benefit of exemption from IGST and Compensation Cess, for goods imported by EOU or for goods imported under Advance Authorisation (AA)/EPCG.

[Explanation.- For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid IGST and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.][Inserted vide NN 16/2020-CT, dt 23-3-2020]

Refund on account of export of goods [with payment of tax] [Rule 96]

The class of exporters restricted under Rule 96(10) are the following:

1. Advance authorization holders importing or locally procuring inputs without payment of GST.
2. EOU importing or locally procuring inputs/capital goods without payment of GST.
3. Merchant exporters procuring finished goods locally at reduced special rate.

The above class of exporters pays Nil or negligible GST/ Cess on the import or domestic procurement of raw material/capital goods. Hence, exports of goods or services on payment of IGST after availing the benefit of said notification and consequent refund of said IGST may lead to liquidation of such ITC which is not related to the said exports of goods or services. Hence, the objective of insertion of Rule 96(10) and similar amendments in input tax credit refund rules seems to plug that gap. It prevents the exporter from drawing upon ITC which is related to other domestic supplies which are not utilized in the exports of goods or services.

The following complications which arise from the sub-rule:

- Rule 96 (10) as it stands at present is 'qua' the exporter as it states 'the persons claiming refund of integrated tax paid on export of goods or services ...'. Whether a person who has procured a few inputs by availing any of the Notifications and procured certain other inputs without availing the exemption is also barred from claiming refund?
- If the answer to the above is 'yes', how the exception provided to capital goods received under EPCG Scheme, could insulate the exporter if he had also availed any of the 'outlawed' notifications in respect of some inputs?
- What is the timeframe during which the provision would operate against the exporter? If the benefit of the notifications is claimed even once, will the restriction operate forever or for that financial year or for the next exports? What is the position if benefit of the notifications is claimed for alternating periods or consignments depending on the limit under the Advance Authorisation etc.?

Refund on account of export of goods [with payment of tax] [Rule 96]

Q. We are an EOU, exporting our goods through Chennai Customs. We pay IGST on all our imported inputs and do not claim GST refund on any goods procured from domestic sources. When we export on payment of IGST, the Customs are refusing the refund on the ground that we have imported our capital goods without IGST payment. Is their stand correct?

Rule 96(10)(b) of the CGST Rules, 2017 says that the person claiming IGST refund should not have availed the benefit of notification 78/2017-Cus dated October 13, 2017, that covers imports of capital goods and inputs by the EOU without IGST payment, and also the benefit of notification 79/2017-Cus dated October 13, 2017, that covers imports of inputs under advance authorisation and imports of capital goods under EPCG authorisations by DTA units without IGST payment. However, the said Rule 96(10)(b) has an exception, in the sense that the refund is not to be denied where the person claiming refund has imported capital goods without IGST payment under the EPCG scheme.

A similar dispensation should have been made available to the EOUs. I think it is a drafting flaw that the exception does not cover import of capital goods without IGST payment under the notification for the EOU scheme also. In my opinion, the Chennai Customs are reading the provisions strictly, taking undue advantage of the flawed wording of Rule 96(10)(b) of the CGST Rules, 2017, and seeking to deny refund. You should take up the matter with the CBIC through your Export Promotion Council and get Rule 96(10)(b) suitably amended. Since that may take time, a quick clarification from CBIC will help avoid unnecessary litigation.

Refund on account of export of goods [with payment of tax] [Rule 96]

Decisions under Rule 96(10)

Cosmos Films Ltd. – Gujarat HC

- Petitioner challenged Rule 96(10) restricting refund of IGST paid on export when supplier imported goods under Advance Authorisation Scheme.
- The court held that the contentions raised by the government that there is no discrimination qua the petitioner is tenable in law.
- Also, the court observed as “[Notification No. 54/2018](#) is required to be made applicable w.e.f. 23rd October, 2017”

Zaveri and Co. Pvt. Ltd. – Gujarat HC

- Writ petition admitted against the earlier order of Gujarat HC that [Notification No. 54/2018-CT](#) has a prospective effect and not retrospective effect.
- Proceedings initiated against petitioner stayed.

Refund to UN Bodies, Embassies, etc [Sec 55 read with Sec 54(2)]

Sec 55 The Government may, on the recommendations of the Council, by notification, specify

- any specialised agency of the United Nations Organisation or
- any Multilateral Financial Institution and Organisation 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.

Note –

1. Supplies made to UN bodies and embassies may be exempted from payment of GST as per international obligations. However, this exemption has been operationalised by way of refund mechanism. So, a taxable person making supplies to such bodies would charge the tax due and remit the same to Government account.
2. **Clarifications [Circular No. 36/10/2018-GST, dt 13-3-2018 & 43/17/2018-GST, dt 13-4-2018]**
 1. Entities having UINs are given a special status under the CGST Act as these are not covered under the definition of registered person. These entities have been granted UINs to enable them to claim refund of GST paid on inward supply of goods or services or both received by them. Therefore, if any such entity is making supply of goods or services or both in the course or furtherance of business then such entity will need to apply for GSTIN as per the provisions contained in the CGST Act read with the rules made thereunder.
 2. Facility of single UIN is optional and an entity may seek more than one UIN.
 3. The recording of UIN on the invoice is a necessary condition under rule 46 of the CGST Rules, 2017.

Refund to UN Bodies, Embassies, etc [Sec 55 read with Sec 54(2)]

Note –

3. In exercise of above power, following persons have been notified, subject to fulfilment of specified conditions :
- (a) United Nations or a specified international organisation and
 - (b) Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein.
 - (c) Further, in exercise of said power, Canteen Stores Department (CSD), under the Ministry of Defence, has been notified as a person who shall be entitled to claim a refund of 50% of the applicable CGST/IGST paid by it on all inward supplies of goods received by it for the purposes of subsequent supply of such goods to the Unit Run Canteens of the CSD or to the authorised customers of the CSD.
 - (d) Retail outlets established in the departure area of an international airport, beyond the immigration counters, making tax free supply of goods to an outgoing international tourist, as class of persons who shall be entitled to claim refund of applicable central tax paid on inward supply of such goods, subject to the conditions specified in rule 95A of the CGST Rules, 2017. This rule has been omitted vide **NN 14/2019-CT, dated 5-7-2022, w.e.f. 1-7-2019**

Explanation. - For the purposes of this notification, the expression “outgoing international tourist” shall mean a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes. **[specified by NN 11/2019-CT(R) w.e.f. 01-07-2019]**

Time Limit for Filing refund claim[Sec 54(2) read with rule 95(1)] – Persons eligible to claim refund 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 as may be prescribed, before the expiry of **6 months [increased to 18 months][NN 20/2018-CT dt 28/03/2018]** from the last day of the quarter in which such supply was received.

Notifications issued under CGST Act, 2017 applicable to Goods and Services Tax (Compensation to States) Act, 2017 [Circular No. 68/42/2018-GST, dt 5-10-2018] –

- Section 11 of the GST (Compensation to States) Act, 2017 provides that provisions of CGST Act and IGST Act apply in relation to levy and collection of Compensation Cess. Further, section 9(2) of the Compensation Cess Act provides that for all the purposes of claiming refunds, except the form to be filed, the provisions of the CGST Act and the rules made thereunder, shall apply in relation to the levy and collection of Compensation Cess. Therefore, notifications issued under the CGST Act except those prescribing rate or granting exemptions, are applicable for the purpose of the Compensation Cess Act.
- In view of the above, it is clarified that UN and specified international organizations, foreign diplomatic missions or consular posts in India, or diplomatic agents or career consular officers posted therein, having being specified under section 55 of the CGST Act, 2017, are entitled to refund of Compensation Cess payable on intra-State and inter-State supply of goods or services or both received by them subject to the same conditions and restrictions, mutatis mutandis, as prescribed in Notification issued in the CGST Act.

Refund to UN Bodies, Embassies, etc [Sec 55 read with Sec 54(2)]

Rule 95(1) Any person eligible to claim refund of tax paid by him on his inward supplies as per notification issued section 55 shall **apply for refund in FORM GST RFD-10 once in every quarter, electronically** on the common portal or otherwise, 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.

Rule 95(2) An **acknowledgement** for the receipt of the application for refund shall be issued in **FORM GST RFD-02**.

Rule 95(3) The refund of tax paid by the applicant shall be available if-

- (a) the inward supplies of goods or services or both were received from a registered person against a tax invoice
- (b) name and GSTIN or UIN of the applicant is mentioned in the tax invoice; and
- (c) such other restrictions or conditions as may be specified in the notification are satisfied.

[**Provided** that where Unique Identity Number of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall be available only if the copy of the invoice, duly attested by the authorized representative of the applicant, is submitted along with the refund application in **FORM GST RFD-10**.]**[Proviso Inserted vide Notification No. 40/2021-CT dated 29th Dec, 2021, w.e.f. 1-4-2021]**

Rule 95(4) The provisions of rule 92 shall, mutatis mutandis, apply for the sanction and payment of refund under this rule.

Rule 95(5) 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 –

3. Specialized agencies notified under section 55 of CGST Act entitled to refund of IGST paid on import of goods

Sec 55 of the CGST Act provides refund of tax paid on the notified supplies of goods/services by notified specialized agencies like UN or a specified international organization. Sec 3(7) of Customs Tariff Act, 1975 provides for a parity between the integrated tax rate attracted on imported goods and the integrated tax applicable on the domestic supplies of goods. Therefore, on this principle of parity, specialized agencies ought to get the refund of the IGST paid on imported goods (**Circular No. 23/2019-Cus. Dt 1-8-2019**)

Interest on Delayed Refunds [Sec 56 read with Rule 94]

Sec 56

- If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within 60 days from the date of receipt of application under subsection (1) of that section,
- interest at such rate **not exceeding 6%***
- from the date immediately after the expiry of 60 days from the date of receipt of application under the said sub-section till the date of refund of such tax:

* As notified vide NN 13/2017-CT dt 28-6-2017

- **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 60 days from the date of receipt of application filed consequent to such order,
- interest at such rate **not exceeding 9%***
- from the date immediately after the expiry of 60 days from the date of receipt of application till the date of refund.

* As notified vide NN 13/2017-CT dt 28-6-2017

Explanation—For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate 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).

Interest on Delayed Refunds [Sec 56 read with Rule 94]

Rule 94 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~~ payment order
[“Payment advice” words are replaced by “Payment Order”, by NN 31/2019-CT, w.e.f. 24-3-2019]
- in **FORM GST RFD-05**,
- specifying therein the
 - amount of refund which is delayed,
 - the period of delay for which interest is payable and
 - the amount of interest payable, and
- such amount of interest 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.

Consumer Welfare Fund [Sec 57 & 58 read with Rule 97]

Sec 57. 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.

Sec 58(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**.

Rule 97(4) The Government shall, by an order, constitute a Standing Committee who shall make recommendations for proper utilisation of the money credited to the Consumer Welfare Fund for welfare of the consumer

Sec 58(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.

Consumer Welfare Fund [Sec 57 & 58 read with Rule 97]

Rule 97(1) All amounts of duty/central tax/ integrated tax /Union territory tax/cess and income from investment along with other monies specified in sub-section (2) of section 12C of the Central Excise Act, 1944, **section 57 of the CGST Act, 2017** read with section 20 of the IGST Act, 2017, section 21 of the UTGST Act, 2017 and section 12 of the GST(Compensation to States) Act, 2017 shall be credited to the Fund:

Provided that an amount equivalent to **50%** of the amount of integrated tax determined under sub-section (5) of section 54 of the CGST Act, 2017, read with section 20 of the Integrated Goods and Services Tax Act, 2017, shall be deposited in the Fund:

Provided further that an amount equivalent to **50%** of the amount of cess determined under sub-section (5) of section 54 read with section 11 of the GST (Compensation to States) Act, 2017, shall be deposited in the Fund.

Rule 97(2) Where any amount, having been credited to the Fund, is ordered or directed to be paid to any claimant by the proper officer, appellate authority or court, the same shall be paid from the Fund.