

Refunds

Q 1. What are the situations which may give rise to refund under GST?

Ans. A claim for refund may arise on account of-

1. Export of Goods or services on payment of tax
2. Supply of goods or services to SEZs units and developers on payment of tax
3. Export of Goods or services under Bond/Letter of Undertaking, without payment of tax
4. Supply of goods or services to SEZs units and developers under Bond/Letter of Undertaking, without payment of tax
5. Deemed Exports (refund available to both supplier and recipient)
6. Refund of taxes on purchase made by UN Agencies, Embassies etc
7. Refund arising on account of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court
8. Refund of accumulated Input Tax Credit on account of inverted duty structure
9. Finalisation of provisional assessment
10. Excess balance in electronic cash ledger
11. Excess payment of tax
12. Refunds to International tourists of GST paid on goods in India and carried abroad at the time of their departure from India (not yet operationalized)
13. 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)
14. Refund of CGST & SGST paid by treating the supply as intra-State supply which is subsequently held as inter-State supply and vice versa.
15. Refund to CSD Canteens.

The list is only indicative and not exhaustive.

Q 2. Whether Provisional Refund is allowable for all refunds under GST?

Ans. No. Section 54(6) of CGST Act provides for grant of provisional refund of 90% of the total refund claim, in case the claim relates to refund arising on account of zero rated supplies. Thus only refund claims where refund arises on account of zero rated supply will be entitled to provisional refund.

Q 3. Which supplies would be considered as zero rated?

Ans. In terms of Section 16(1) of IGST Act, following supplies are considered as zero rated

- (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.

Q 4. The GST Law allows exports to be made under a LUT in all cases. Is this

statement true or false?

Ans. The facility of export under LUT is available to all exporters in terms of notification No. 37/2017- Central Tax dated 4th October, 2017, except to those who have been prosecuted for any offence under the CGST Act or the IGST Act or any of the existing laws in force in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees. Para 2(d) of the Circular No. 8/8/2017-GST dated 4th October, 2017, mentions that a person intending to export under LUT is required to give a self-declaration at the time of submission of LUT that he has not been prosecuted. Persons who are not eligible to export under LUT are required to export under bond/bank guarantee

Q 5. What is the time limit within which provisional refund has to be sanctioned by the proper officer?

Ans. The provisional refund has to be sanctioned within 7 days from date of acknowledgement.

Q 6. Can refund of Transitional Credit be claimed as refund of accumulated ITC?

Ans. No. Refund of accumulated ITC is given based on a formula which uses the phrase 'Net ITC' and defines the same as "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". Since the transitional credit pertains to duties and taxes paid under the existing laws viz., under Central Excise Act, 1944 and Chapter V of the Finance Act, 1994, the same cannot be said to have been availed during the relevant period and thus, cannot be treated as part of 'Net ITC'.

Q 7. When is a deficiency memo issued in respect of a refund claim made u/s 54?

Ans. Rule 90 (3) of the CGST Rules provides for communication in FORM GST RFD-03 (deficiency memo) where deficiencies are noticed. The said sub-rule also provides that once the deficiency memo has been issued, the claimant is required to file a fresh refund application after the rectification of the deficiencies.

Q 8. Can deficiency memo be issued more than once for a refund claim?

Ans. No. Rule 90 of the CGST Rules clearly states that once an applicant has been communicated the deficiencies in respect of a particular application, the applicant shall furnish a fresh refund application after rectification of such deficiencies. Thus, there can be only one deficiency memo for one refund application and once such a memo has been issued, the applicant is required to file a fresh refund application, manually in FORM GST RFD-01A. Once an application has been submitted afresh, pursuant to a deficiency memo, the proper officer will not serve another deficiency memo with respect to the application for

the same period, unless the deficiencies pointed out in the original memo remain unrectified, either wholly or partly, or any other substantive deficiency is noticed subsequently

(Para 6.1 of CBIC Circular no. 37/11/2018-GST dated 15.03.2018)

Q 9. How can fresh claims be filed pursuant to issuance of deficiency memo?

Ans. This fresh application has to be accompanied with the original ARN, debit entry number generated originally and a hard copy of the refund application filed online earlier.

Q 10. What would happen if exports have been made without submitting any Bond/LUT. Will refund be denied on account of such exports?

Ans. No. Substantive benefits of zero rating will not be denied where it has been established that exports in terms of the relevant provisions have been made. The delay in furnishing of LUT in such cases may be condoned and the facility for export under LUT will be allowed on ex post facto basis taking into account the facts and circumstances of each case. Reference may be made to Circular No.37/11/2018-GST dated 15th March 2018.

Q 11. What are the documents to be submitted along with a refund claim of accumulated ITC on account of export of goods and services without payment of tax?

Ans. The following documents will have to be submitted :

- ? Copy of FORM RFD-01A filed on common portal
- ? Copy of ARN
- ? Copy of Statement 3A of FORM RFD-01A generated on common portal
- ? Copy of Statement 3 of FORM RFD-01A
- ? Printout of GSTR-2A and in cases where invoice details are not reflected in the GSTR-2A, the copy of Invoices w.r.t. input and input services. (Refer Circular No. 59/33/2018-GST dated 04th September 2018)
- ? BRC/FIRC for export of services
- ? Undertaking / Declaration in FORM RFD-01A

Q 12. What are the documents to be submitted along with a refund claim of IGST paid on export of services?

Ans. The following documents will have to be submitted

- ? Copy of FORM RFD-01A filed on common portal
- ? Copy of ARN
- ? Copy of Statement 2 of FORM RFD-01A generated on common portal
- ? Printout of GSTR-2A and in cases where invoice details are not reflected in the GSTR-2A, the copy of Invoices w.r.t. input and input services and capital goods (Refer

Circular No. 59/33/2018-GST dated 04th September 2018)

? BRC/FIRC for export of services.

? Undertaking / Declaration in FORM RFD-01A

Q 13. Whether the claimant will need to produce FIRC/BRC in a claim for refund of ITC on account of export of goods?

Ans. No. In case of export of goods, realization of consideration is not a pre-condition. Insistence on proof of realization of export proceeds for processing of refund claims related to export of goods has not been envisaged in the law and will not be insisted upon.

Q 14. In case of supplies made to Merchant Exporters, will the supplies so made be treated as zero rated for the supplier?

Ans. No. Such supplies are considered as normal supplies. However, if the manufacturer makes supplies by fulfilling conditions under notification no.40/2017-Central Tax (Rate) dated 23.10.2017 (corresponding IGST notification no.41/2017-Integrated Tax (Rate) dated 23.10.2017) and paying tax @ 0.1%, he can claim refund of unutilised ITC on account of inverted duty structure.

Q 15. If such supplies are not zero rated, will it mean that the supplier will not be entitled to any refund on such supplies?

Ans. No. The supplier who supplies goods at the concessional rate is also eligible for refund on account of inverted tax structure as per the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act.

Q 16. What is meant by the terms “relevant period” in so far as refund claims under GST are concerned. Is it different from “tax period” defined under the law?

Ans. Section 2(107) of the CGST Act defines the term “tax period” as the period for which the return is required to be furnished. The terms ‘Net ITC’ and ‘turnover of zero rated supply of goods/services’ are used in the context of the relevant period in rule 89(4) of CGST Rules. The phrase ‘relevant period’ has been defined in the said sub-rule as ‘the period for which the claim has been filed’. Thus, it can be seen that the two terms have different connotations under the law.

Q 17. Is refund linked to a tax period or relevant period under GST Law?

Ans. Refund is related to “relevant period” and not to “tax period”. In many scenarios, exports may not have been made in that period in which the inputs or input services were received and input tax credit has been availed. Similarly, there may be cases where exports may have been made in a period but no input tax credit has been availed in the said period.

The above referred rule, taking into account such scenarios, defines relevant period in the context of the refund claim and does not link it to a tax period.

Q 18. Can the exporter file refund claims by clubbing successive calendar months/quarter or should the claim be filed on a monthly basis?

Ans. The Exporter, at his option, may file refund claim for one calendar month / quarter or by clubbing successive calendar months / quarters. The calendar month(s) / quarter(s) for which refund claim has been filed, however, cannot spread across different financial years.

Q 19. Can refund of taxes paid under existing laws (Central Excise/Service Tax) be made under GST?

Ans. No. Refund claims of taxes paid under existing laws have to be dealt with as per the provisions of existing laws only.

Q 20. How will refund claims made under existing laws be dealt with?

Ans. As per section 142(3) of the CGST Act, the amount of refund arising out of such claims shall be refunded in cash. Further, the first proviso to the said sub-section provides that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse and therefore, will not be transitioned into GST.

Q 21. For Export of goods made under LUT, what is the time period within which proof of export need to be submitted?

Ans. Rule 96A (1) of the CGST Rules provides that any registered person may export goods or services without payment of integrated tax after furnishing a LUT / bond and that he would be liable to pay the tax due along with the interest as applicable within a period of fifteen days after the expiry of three months or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the goods are not exported out of India.

Q 22. For Export of services made under LUT, what is the time period within which proof of export need to be submitted?

Ans. The time period in case of services is fifteen days after the expiry of one year or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India. (The underlined portion has been inserted vide CGST (Amendment) Act, 2018 and shall not into force once the same is notified).

Q 23. What are the circumstances in which manual filing of refund claims is permitted

under GST?

Ans. Manual filing of refund claims is permitted, vide circular no.17/17/2017-GST dated 15th November 2017 and circular no.24/24/2017 dated 24th November 2017 and circular no.36/10/2018-GST dated 13th March 2018, if the claim is on account of following

- (i) refund of unutilized input tax credit on account of zero rated supplies
 - (ii) refund of unutilized input tax credit 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) of goods or services or both except those supplies which are notified by the Government on the recommendations of the Council.
 - (iii) Refund on account of supplies in terms of notification Nos. 40/2017-Central Tax (Rate) and 41/2017-Integrated Tax (Rate) both dated 23.10.2017
 - (iv) refund of tax on the supply of goods regarded as deemed exports;
 - (v) refund of balance in the electronic cash ledger; and
 - (vi) Refund claim by UIN entities.
- (Other scenarios may be added after the proposal is accepted by Council in its meeting scheduled on 22/12/2018).

Q 24. What is the form in which manual claims need to be filed?

Ans. Manual claims need to be filed in Form GST RFD-01A. Form RFD-10 for UIN entities.

Q 25. What is the periodicity for filing of refund claims?

Ans. Refund claims in respect of zero-rated supplies and on account of inverted duty structure, deemed exports and excess balance in electronic cash ledger shall be filed for a tax period on a monthly basis in FORM GST RFD-01A. However, in case registered persons having aggregate turnover of up to Rs1.5 crore in the preceding financial year or the current financial year are opting to file FORM GSTR-1 quarterly (notification No. 57/2017-Central Tax dated 15.11.2017 refers), such persons shall apply for refund on a quarterly basis.

The Exporter, at his option, may file refund claim for one calendar month / quarter or by clubbing successive calendar months / quarters. The calendar month(s) / quarter(s) for which refund claim has been filed, however, cannot spread across different financial years. RFD-10 has to be filed by UIN entities on a quarterly basis.

Q 26. Can refund claims be filed even if GSTR-1/3B for the particular period has not been filed?

Ans. No. Refund claim for a tax period can be filed only after filing the details in FORM

GSTR-1 for the said tax period. It is also to be ensured that a valid return in FORM GSTR-3B has been filed for the last tax period before the one in which the refund application is being filed.

Q 27. Will provisionally accepted ITC be allowed as refund?

Ans. Yes, it will be allowed for the time being. Since the date of furnishing of FORM GSTR 1 from July, 2017 onwards has been extended while the dates of furnishing of FORM GSTR 2 and FORM GSTR 3 for such period are yet to be notified, it has been decided by the competent authority to sanction refund of provisionally accepted input tax credit at this juncture. However, the registered persons applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 read with sub-section (2) of sections 42 of the CGST Act have not been complied with in respect of the amount refunded.

Q 28. What is the format in which the undertaking referred to above needs to be filed?

Ans. The undertaking should be submitted manually along with the refund claim and the same is available in FORM RFD-01A on the common portal.

Q 29. What will happen if the refund claim of unutilised ITC is rejected?

Ans. Where any amount claimed as refund is rejected under rule 92 of the CGST Rules, 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 RFD-1B until the FORM GST PMT-03 is available on the common portal. (Para 4 of circular no. 59/33/2018-GST dated 04th September, 2018 refers).

Q 30. In respect of deemed export supplies, who can claim refund?

Ans. The third proviso to rule 89(1) of the CGST Rules allows the recipient or the supplier to apply for refund of tax paid on such deemed export supplies.

Q 31. What are the documents required to be filed where the claim is on account of deemed exports?

Ans. 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 by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and that no input tax credit on such supplies has been availed of by him. The undertaking should be submitted manually along with the refund claim.

Similarly, in case the refund is filed by the recipient of deemed export supplies, an

undertaking by the supplier of deemed export supplies that he shall not claim the refund in respect of such supplies is also required to be furnished manually.

Further, as per the provisions of rule 89(2)(g) of the CGST Rules, a statement 5B of FORM GST RFD-01A (showing details of invoices of outward supplies in case refund is claimed by supplier/ Details of invoices of inward supplies in case refund is claimed by recipient) is also required to be furnished for claiming refund on supplies declared as deemed exports.

Q 32. What are deemed export supplies?

Ans. The following categories of supply of goods have been notified as deemed exports under section 147 of CGST Act, vide notification no.48/2017-Central Tax dated 18.10.2017

Sr.No Description of Supply

- | | |
|---|---|
| | Supply of goods by a
registered person against |
| 1 | Advance Authorisation |
| | Supply of capital goods by
a registered person against |
| | Export Promotion Capital |
| 2 | Goods Authorisation |
| | Supply of goods by a
registered person to |
| 3 | Export Oriented Unit |
| | Supply of gold by a bank
or Public Sector |
| | Undertaking specified in
the notification No. |
| | 50/2017-Customs, dated
the 30th June, 2017 (as
amended) against Advance |
| 4 | Authorisation |

Q 33. What are the situations in which refund of accumulated ITC is allowed under GST?

Ans. Refund of accumulated ITC is allowed only when the credit accumulation is on account of zero rated supply or on account of inverted rate structure.

Q 34. What are the situations in which refund of accumulated ITC will not be allowed even if it's a case of zero rated supplies or inverted rate structure?

Ans. Refund of ITC will not be allowed where the goods exported out of India are subject to export duty or where the supplier claims refund of IGST paid on such supplies. The Government also has the power to notify supplies where refund of ITC will not be admissible even if such credit accumulation is on account of an inverted duty structure.

Q 35. Has the Government exercised its powers to curtail refund of ITC in respect of any product/services ?

Ans. Yes. The government has issued notification no.15/2017-Central Tax (Rate) dated 28th June 2017 wherein it has been notified that no refund of unutilised input tax credit shall be allowed under section 54(3) of the CGST Act, in case of supply of services specified in sub-item (b) of item 5 of Schedule II of the Central Goods and Services Tax Act. The supplies specified under item 5(b) of Schedule II are construction services. In respect of goods, the central government has issued notification no.5/2017- Central Tax (Rate) dated 28th June 2017 as amended by notification no.44/2017-Central Tax (Rate) dated 14.11.2017 and notification no.20/2018-Central Tax (Rate) dated 26th July 2018. The government has notified the following goods in respect of which unutilized ITC will not be admissible as refund.

Tariff item, heading, Sub-heading or Sr.No chapter		Description of Goods
1	8601	Rail locomotives powered from an external source of electricity or by electric accumulators
		Other rail locomotives; locomotive tenders; such as Diesel-electric locomotives, Steam locomotives and tenders
2	8602	thereof Self-propelled railway or tramway coaches, vans and trucks, other than
3	8603	those of heading 8604

		Railway or tramway maintenance or service vehicles, whether or not self-propelled (for example, workshops, cranes, ballast tampers, trackliners, testing coaches and track
4	8604	inspection vehicles) Railway or tramway passenger coaches, not self-propelled; luggage vans, post office coaches and other special purpose railway or tramway coaches, not self-propelled (excluding
5	8605	those of heading 8604) Railway or tramway goods vans and wagons,
6	8606	not self-propelled Parts of railway or tramway locomotives or rolling-stock; such as Bogies, bissel-bogies, axles and wheels, and
7	8607	parts thereof Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical) signalling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields;
8	8608	parts of the foregoing

Q 36. Will the above restriction in Q 35 (applicable for inverted rate structure refund)

apply for zero rated supplies?

Ans. No. It has also been clarified by the Government vide Circular No.18/18/2017-GST dated 16.11.2017, that the aforesaid notification having been issued under clause (ii) of the proviso to Section 54(3) of the CGST Act, 2017, restriction on refund of unutilised input tax credit of GST paid on inputs will not be applicable to zero rated supplies, that is (a) export of goods or services or both; or (b) supply of goods or services or both to a Special Economic Zone Developer of special Economic Zone Unit.

Q 37. How will the refund amount be calculated in case of claim of unutilised ITC on account of zero rated supplies?

Ans. The refund will be calculated based on the formula $\text{Refund Amount} = (\text{turnover of zero rated supply of goods} + \text{turnover of zero rated supply of services}) \times \text{Net ITC} / \text{Adjusted total turnover}$.

Q 38. How will the refund amount be calculated in case of claim of unutilised ITC on account of inverted rate structure?

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

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

Q 39. What does "Net ITC" mean for the purpose of calculation of refund amount?

Ans. "Net ITC" for the purpose of refund on account of zero rated supply 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 of Rule 89 of CGST Rules.

"Net ITC" for the purpose of refund on account of inverted rate structure means 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 of Rule 89 of CGST Rules.

Q 40. What does Turnover of zero rated supply of goods mean for the purpose of calculation of refund amount?

Ans. "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, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both of Rule 89 of CGST Rules.

Q 41. What does Turnover of zero rated supply of services mean for the purpose of

calculation of refund amount?

Ans. "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.

Q 42. What does Adjusted Total Turnover mean for the purpose of calculation of refund amount?

Ans. "Adjusted Total turnover" means the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding –

- (a) the value of exempt supplies other than zero-rated supplies; and
- (b) the turnover of supplies in respect of which refund is claimed under rule 89(4A) or (4B) or both, if any, during the relevant period.

Q 43. For a claim of refund of IGST paid on export of goods, will the applicant need to file GST RFD-01/01A?

Ans. No. As per rule 96 of the CGST Rules, 2017, the shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India.

Q 44. Will such refund claims be treated as having been filed when the shipping bill is filed?

Ans. No. 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 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.

Q 45. Who will process/disburse refund of IGST paid on export of goods?

Ans. As per Rule 96, the refund of IGST paid on export of goods is processed and disbursed by Customs.

Q 46. What are the validations required for processing refund claim of IGST on

export of goods?

Ans. For processing such refund, GST system transmits invoice level data of Table 6A in GSTR 1 subject to the following validations: -

1. GSTR-3B is filed for the corresponding period, with admitted tax liability under Table 3.1(b);
2. Export invoices are submitted in GSTR-1/Table 6A and have correct shipping bill number, shipping bill date and port code;
3. The admitted tax liability of IGST under table 3.1(b) of GSTR-3B, is equal to, or greater than, the IGST amount claimed to have been paid under Table 6A of GSTR-1 of the corresponding period.

Q 47. Can refund of IGST on export of goods be withheld under any circumstances?

Ans. Yes. Situations where refund of IGST on goods can be withheld are as under

(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. invoice level data of Table 6A in GSTR 1 subject to the following validations: -

1. GSTR-3B is filed for the corresponding period, with admitted tax liability under Table 3.1(b);
2. Export invoices are submitted in GSTR-1/Table 6A and have correct shipping bill number, shipping bill date and port code;
3. The admitted tax liability of IGST under table 3.1(b) of GSTR-3B, is equal to, or greater than, the IGST amount claimed to have been paid under Table 6A of GSTR-1 of the corresponding period.

Q 47. Can refund of IGST on export of goods be withheld under any circumstances?

Ans. Yes. Situations where refund of IGST on goods can be withheld are as under

(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.

Q 48. What are the modalities to be followed when refund is withheld on the request of

the jurisdictional Commissioner of Central /State Tax?

Ans. Where refund is withheld in accordance with request from jurisdictional commissioner, 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.

Thereafter, the proper officer of central tax or State tax or Union territory tax, as the case may be, shall pass an order in Part B of FORM GST RFD-07.

Where the applicant becomes entitled to refund of the amount withheld as above, 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.

Further, as per Circular no.17/17/2017-GST, any order regarding withholding of such refund or its further sanction respectively in PART-B of Form GST RFD-07 or Form GST RFD-06 shall be done manually till the refund module is operational on the common portal.

Q 49. When will interest become payable in a refund claim?

Ans. As per Section 56 of CGST Act, if any tax ordered to be refunded under section 54 (5) to any applicant is not refunded within sixty days from the date of receipt of application under section 54(1), interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax.

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

Where the claim relates to refund of pre-deposit made as per Section 107 or 112 of the GST Act, different provisions will apply for interest. As per Section 115 of the GST Act, where an amount paid by the appellant under section 107(6) or section 112(8) is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount. Thus, in cases of refund of pre-deposit

amount, interest will have to be paid from the date of payment till the date of refund of the

amount (and not from date of receipt of claim for such refund of pre-deposit)

Q 50. What is the rate of interest notified by the Government for delayed settlement of refund claims?

Ans. As per notification no.13/2017-Central Tax dated 28th June 2017, interest @6% will be payable under Section 56. (normal claims where payment is delayed beyond 60 days from the receipt of application). The same rate of interest @6% will be payable in cases of refund of pre-deposit. Interest @ 9% will be payable in cases of refund falling under proviso to Section 56. (cases where refund claim arises as a consequence of court order/judgement).

Q 51. How will an order for payment of interest be made under GST?

Ans. Rule 94 of the CGST Rules provide that an order for interest shall be made along with payment advice 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.

Q 52. Does interest become due if it is not paid within 60 days of receipt of application or 60 days of acknowledgement?

Ans. Normally, interest becomes payable if claim is not settled within 60 days of receipt of application. It is to be noted that the date of acknowledgement is not the date of receipt of application. When an application for refund is submitted, it is transferred to the proper officer for scrutiny of the claim. The proper officer needs to check for deficiencies if any in the claim and this scrutiny needs to be completed within 15 days. If the documents are in order, the acknowledgement needs to be given within 15 days from the date of receipt of application and the acknowledgement will also show the date of receipt. The period of 60 days starts from such date of receipt and not from the date when acknowledgement is given which can be any date within 15 days from the date of receipt of application.

Q 53. What is the relevant date within which claim for refund is to be filed?

Ans. A claim for refund is to be filed within 2 years of a relevant date. Relevant date is different for different scenarios which is as under:

(a) in the case of goods exported out of India where a refund of tax paid is available in respect of the goods themselves or, as the case may be, the inputs or input services used in such goods, -

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which

such goods are loaded, leaves India, or

(ii) if the goods are exported by land, the date on which such goods pass the frontier, or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is filed;

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of -

(i) receipt of payment in convertible foreign exchange, where the supply of service had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any Court, the date of communication of such judgment, decree, order or direction;

(e) in the case of refund of unutilized input tax credit under sub-section (3), the end of the financial year in which such claim for refund arises;

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(g) in the case of a person, other than the supplier, the date of receipt of goods or services by such person; and

(h) in any other case, the date of payment of tax.

It is to be noted that for refund claim filed by UN bodies, Embassies etc the relevant date and the time period within which refund claim is to be filed is specified in Section 54(2) itself, which is before the expiry of six months from the last day of the month in which such supply was received.

Q 54. What is the significance of relevant date for the purpose of refund?

Ans. Relevant Date assumes significance to ascertain whether the refund claim has been filed within the period of limitation envisaged under the law. Thus, every refund claim is to be filed within 2 years from the relevant date. The relevant date is different for different scenarios. Thus, different relevant date is specified for refund on account of export of goods, export of services, accumulated input tax credit, finalisation of provisional assessment etc.

Q 55. Does GST law recognize the concept of payment of tax under protest?

Ans. No

Q 56. Can Merchant Exporters or recipient of deemed export supplies claim refund of IGST paid on export of goods (exports made out of supplies received from supporting manufacturer/supplies received under advance/EPCG authorization etc)?

Ans. No. It is to be noted that Rule 96(10) has been inserted, w.e.f 23.10.2017, in CGST Rules, 2017 vide Notification no. 75/2017-Central Tax dated 29.12.2017 (this was last amended vide notification No. 54/2018- Central tax dated 09.10.2018) so as to provide that the refund of integrated tax paid on export of goods or services is not permitted to such persons who have received supplies on which the supplier has availed the benefit of Notification no. 48/2017-Central Tax dated 18.10.2017 (supplies regarded as deemed exports) or Notification no. 40/2017- Central Tax (Rate) dated 23.10.2017 (supplies to merchant exporters at concessional rate of CGST+SGST) or notification No. 41/2017- Integrated Tax (Rate) dated 23.10.2017. (supplies to merchant exporters at concessional rate of IGST).

Thus, in respect of deemed export supplies/merchant exports, the option given under section 16(3) of IGST Act, 2017, (of either paying tax and claiming refund of IGST or exporting under Bond and claiming refund of ITC), gets restricted and the zero-rated supplier can only avail of refund of ITC, as per Rule 89, in such cases.

Q 57. Are refunds of IGST on export of goods automated under the GST Law?

Ans. Yes. The IGST refund module has an in-built mechanism to automatically grant refund after validating the Shipping Bill data as available in ICES with the GST Returns data transmitted by GSTN. The matching between the two data sources is done at Invoice level and any mis-match of the laid down parameters returns shows error code.

Q 58. How will acknowledgment of manual refund claims be given?

Ans. The refund claim will be verified for its completeness and availability of supporting documents. Once completeness in all respects is ascertained, acknowledgement in Form GST RFD-02 shall be issued within 15 days from the date of filing of application and entry shall be made in the refund register for receipt of refund applications. The date of submission of application for which acknowledgement has been given will be considered as the date for ensuring whether the refund application has been sanctioned within the stipulated time period.

Q 59. What are the conditions subject to which provisional refund will be granted?

Ans. Rule 91 of the CGST Rules deal with the grant of provisional refund. The provisional refund in accordance with the provisions of section 54(6) shall be granted subject to the

condition that the person claiming refund has, during any period of five years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds two hundred and fifty lakh rupees.

Q 60. How will provisional refunds be processed?

Ans. 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 section 54(6), shall make an order in FORM GST RFD-04, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding seven days from the date of the acknowledgement under rule 90.

The proper officer shall issue a payment advice 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.

Q 61. Will provisional refund be granted separately under each head or will it be combined?

Ans. Provisional refund shall be granted separately for each head Central Tax/State Tax/UT Tax/Integrated Tax/Cess within 7 days of acknowledgement in Form GST RFD-04. Central /Integrated Tax/Cess would be paid by the Centre Tax Authorities and State Tax/UT tax would be disbursed by the State/UT Tax Authorities.

Q 62. How will the proper officer satisfy the requirement of condition that the applicant has not been prosecuted for any offence under the Act?

Ans. Based on declaration of applicant. Before sanction of the refund a declaration shall be obtained that the applicant has not contravened Rule 91(1) (condition that the person claiming refund has, during any period of five years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds two hundred and fifty lakh rupees).

Q 63. How will claims be processed finally after sanction of provisional refund?

Ans. After sanction of the provisional refund, final order is to be issued within sixty days (after due verification of the documentary evidences) of the date of receipt of the complete application form.

The proper officer has to validate the refund statement details with details in Form GSTR-1

(or Table 6A of Form GSTR-1) available on the common portal. Details of IGST paid, in case of export of services on payment of IGST, also needs to be verified from Form GSTR 3 or Form GSTR 3B as the case may be, filed by the applicant and it needs to be verified that the refund amount claimed shall be less than the tax paid on account of zero rated supplies as per Form GSTR-3 or 3B as the case may be. In case of export under bond / LUT, debit to the electronic credit ledger need to be checked up.

If the sanctionable amount is less than the applied amount or if the refund claim is proposed to be rejected, then a notice has to be issued to the applicant in Form GST RFD-08. The applicant has to reply within 15 days of receipt of notice in Form GST 09. Principles of natural justice will have to be followed before making the final decision. Final order will be made by the proper officer in Form GST RFD-06.

Q 64. How will final refund sanction order be issued?

Ans. The proper officer shall issue the refund order manually for each head i.e. Central Tax / State Tax / UT Tax / Integrated Tax/Cess. Amount paid provisionally needs to be adjusted accordingly. Payment advice is to be made in FORM GST RFD-05. Refund, if any, will be paid by an order with payment advice in FORM GST RFD-05. The details of the refund on account of Central Tax/Integrated Tax/Cess along with taxpayer bank account details shall be manually submitted in PFMS system by the jurisdictional Division's DDO and a signed copy of the sanction order shall be sent to PAO office for release of payment.

Q 65. Will both SGST and CGST be paid by the same authority?

Ans. No. The refund application for various taxes i.e. CT/ST/UT/IT/Cess is required be filed with that tax authority to whom the taxpayer has been assigned and shall be processed and sanction order for all taxes would be issued by the said authority. (In case the taxpayer has not been assigned, he can submit his application with any tax authority). However, payment of the sanctioned refund amount shall be made only by the respective tax authority of the Centre or State Government. The payment of the sanctioned refund amount in relation to Central Tax/ Integrated Tax/ /Cess shall be made by the Central Tax authority while payment of the sanctioned refund amount in relation to ST/UT would be made by the State Tax/UT tax authority.

Q 66. How will communication between Central and State tax authorities take place?

Ans. The refund order issued either by the Central Tax authority or the State Tax/UT Tax authority shall be communicated to the concerned counterpart tax authority within seven days for the purpose of payment of the relevant sanctioned refund amount of tax or cess as the case may be. In order to facilitate sanction of refund amount of central tax and State tax by the respective tax authorities, it has been decided that both the Central and State Tax

authority shall nominate nodal officer(s) for the purpose of liaisoning through a dedicated e-mail id.

Where the amount of central tax and State tax refund is ordered to be sanctioned provisionally/ finally by the Central tax authority and a sanction order is passed in accordance with the provisions of rule 91(2) of the CGST Rules, the Central tax authority shall communicate the same, through the nodal officer, to the State tax authority for making payment of the sanctioned refund amount in relation to State tax and vice versa. The aforesaid communication shall primarily be made through e-mail attaching the scanned copies of the sanction order [FORM GST RFD-04 or FORM GST RFD-06], the application for refund in FORM GST RFD-01A and the Acknowledgement Receipt Number (ARN). Accordingly, the jurisdictional proper officer of Central or State Tax, as the case may be, shall issue FORM GST RFD-05 and send it to the DDO for onward transmission for release of payment. After release of payment by the respective PAO to the applicant's bank account, the nodal officer of Central tax and State tax authority shall inform each other. The manner of communication as referred earlier shall be followed at the time of final sanctioning of the refund also.

Q 67. Who can file claim refund on account of supply to SEZs?

Ans. The DTA supplier will have to file the refund claim in such cases.

Q 68. When can the DTA supplier file refund claims on account of supplies made to SEZ units?

Ans. The proviso to Rule 89 stipulates that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the –

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

Thus, proof of receipt of goods or services as evidenced by the specified officer of the zone is a pre-requisite for filing of refund claim by the DTA supplier.

Q 69. What supporting documents are required to be filed by the DTA supplier in a refund claim?

Ans. The claim has to be filed along with the following documents

1. 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 the case of the supply of goods made to a Special Economic Zone unit or a Special

Economic Zone developer;

2. a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer;

3. a declaration to the effect that the Special Economic Zone unit or the Special Economic Zone developer has not availed the input tax credit of the tax paid by the supplier of goods or services or both, in a case where the refund is on account of supply of goods or services made to a Special Economic Zone unit or a Special Economic Zone developer.

Q 70. Whether the DTA supplier would be entitled to provisional refund?

Ans. As per Section 54(6) of the CGST Act, the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. 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.

Thus DTA suppliers making zero rated supplies to SEZ units will be entitled for provisional refund of 90%.

Q 71. How will the amount of claim (of ITC) be calculated?

Ans. The claim (of accumulated ITC) will be calculated using the following formula
Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

Q 72. What are the documents to be filed along with the claim of refund on account of deemed exports, if the claim is to be filed by the supplier?

Ans. 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 required to be furnished. The notification specifies the following documents.

1. Acknowledgment by the jurisdictional Tax officer of the Advance Authorisation holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said

deemed export supplies have been received by the said Advance Authorisation or Export Promotion Capital Goods Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.

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.

The procedure regarding procurement of supplies of goods from DTA by Export Oriented Unit (EOU) / Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) Unit / Bio-Technology Parks (BTP) Unit under deemed export as laid down in Circular No. 14/14/2017-GST dated 06.11.2017 needs to be complied with.

Q 73. What are the documents to be filed along with the claim of refund on account of deemed exports, if the claim is to be filed by the recipient?

Ans. In case the refund is filed by the recipient of deemed export supplies, an undertaking by the supplier of deemed export supplies that he shall not claim the refund in respect of such supplies is also required to be furnished manually.

The procedure regarding procurement of supplies of goods from DTA by Export Oriented Unit (EOU) / Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) Unit / Bio-Technology Parks (BTP) Unit under deemed export as laid down in Circular No. 14/14/2017-GST dated 06.11.2017 needs to be complied with.

Q 74. What will be the eligible amounts for refund in case of deemed exports?

Ans. While filing RFD-01A (recipient of deemed exports), taxpayers need to enter the amount that they want to get as refund. The lowest of the following three categories are eligible for refund.

1. Balance in the Electronic Credit Ledger
2. ITC availed for the particular tax period
3. Amount entered by taxpayer in refund claim matrix.

Q 75. In case the supplier claims refund on account of deemed export supplies, will the recipient be eligible for refund of ITC in respect of other inputs/input services which have been used in making zero rated supply?

Ans. Yes. As per Rule 89(4A) In the case of supplies received on which the supplier has availed the benefit of notification No. 48/2017-Central Tax 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.

Q 76. What is the Procedure to be followed in case of Deemed Exports?

Ans. Rule 89 of the CGST Rules, 2017 as amended vide Notification No. 47/2017- Central Tax dated 18.10.2017 allows either the recipient or supplier of such supplies to claim refund of tax paid thereon.

For supplies to EOU / EHTP / STP / BTP units in terms of Notification No. 48/2017- Central Tax dated 18.10.2017, the following procedure and safeguards are prescribed -

(i) The recipient EOU / EHTP / STP / BTP unit shall give prior intimation in a prescribed proforma in "Form-A" (appended herewith) bearing a running serial number containing the goods to be procured, as pre-approved by the Development Commissioner and the details of the supplier before such deemed export supplies are made. The said intimation shall be given to –

- (a) the registered supplier;
- (b) the jurisdictional GST officer in charge of such registered supplier; and
- (c) its jurisdictional GST officers.

(ii) The registered supplier thereafter will supply goods under tax invoice to the recipient EOU / EHTP / STP / BTP unit.

(iii) On receipt of such supplies, the EOU / EHTP / STP / BTP unit shall endorse the tax invoice and send a copy of the endorsed tax invoice to –

- (a) the registered supplier;
- (b) the jurisdictional GST officer in charge of such registered supplier; and
- (c) its jurisdictional GST officers.

(iv) The endorsed tax invoice will be considered as proof of deemed export supplies by the registered person to EOU / EHTP / STP / BTP unit.

(v) The recipient EOU / EHTP / STP / BTP unit shall maintain records of such deemed export supplies in digital form, based upon data elements contained in "Form B" (appended herewith). The software for maintenance of digital records shall incorporate the feature of audit trail. While the data elements contained in the Form-B are mandatory, the recipient units will be free to add or continue with any additional data fields, as per their commercial requirements. All recipient units are required to enter data accurately and immediately upon the goods being received in, utilized by or removed from the said unit. The digital records should be kept updated, accurate, complete and available at the said unit at all times for verification by the proper officer, whenever required. A digital copy of Form – B containing transactions for the month, shall be provided to the jurisdictional GST officer, each month (by the 10th of month) in a CD or Pen drive, as convenient to the said unit.

3. The above procedure and safeguards are in addition to the terms and conditions to be adhered to by a EOU / EHTP / STP / BTP unit in terms of the Foreign Trade Policy, 2015-20 and the duty exemption notification being availed by such unit.

Q 77. What is the relevant date for filing of refund claim in case of deemed exports?

Ans. The relevant date is the date of on which return relating to such deemed exports is furnished. The claim needs to be filed within 2 years from this date.

Q 78. What are the conditions subject to which supply of goods (to merchant exporters) at concessional rate may be made?

Ans. Supplies at concessional rate of 0.1% can be made subject to compliance with conditions mentioned in notification no.40/2017-Centra Tax (Rate) dated 23.10.2017. (Corresponding IGST notification no. 41/2017-Integrated Tax (Rate) dated the 23rd October, 2017,) The conditions are as under

- (i) the registered supplier shall supply the goods to the registered recipient on a tax invoice;
- (ii) the registered recipient shall export the said goods within a period of ninety days from the date of issue of a tax invoice by the registered supplier;
- (iii) the registered recipient shall indicate the Goods and Services Tax Identification Number of the registered supplier and the tax invoice number issued by the registered supplier in respect of the said goods in the shipping bill or bill of export, as the case may be;
- (iv) the registered recipient shall be registered with an Export Promotion Council or a Commodity Board recognised by the Department of Commerce;
- (v) the registered recipient shall place an order on registered supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the registered supplier;
- (vi) the registered recipient shall move the said goods from place of registered supplier –
 - (a) directly to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported; or
 - (b) directly to a registered warehouse from where the said goods shall be moved to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported;
- (vii) if the registered recipient intends to aggregate supplies from multiple registered suppliers and then export, the goods from each registered supplier shall move to a registered warehouse and after aggregation, the registered recipient shall move goods to the Port, Inland Container Depot, Airport or Land Customs Station from where they shall be exported;
- (viii) in case of situation referred to in condition (vii), the registered recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the registered warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgment of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier; and

(ix) when goods have been exported, the registered recipient shall provide copy of shipping bill or bill of export containing details of Goods and Services Tax Identification Number (GSTIN) and tax invoice of the registered supplier along with proof of export general manifest or export report having been filed to the registered supplier as well as jurisdictional tax officer of such supplier.

Q 79. What happens if the merchant exporter fails to export such goods?

Ans. The registered supplier shall not be eligible for the exemption (i.e. supply at concessional rate) if the registered recipient fails to export the said goods within a period of ninety days from the date of issue of tax invoice.

Q 80. Can the merchant exporter claim refund of ITC in respect of supplies received at concessional rate in terms of notification 40/2017-Central Tax (Rate) dated 23.10.2017. What about other inputs/input services which have gone into the subject export but which have not been procured under the said notification?

Ans. Yes. Rule 89(4B) of the CGST Rules stipulates that in the case of supplies received on which the supplier has availed the benefit of the notification No. 40/2017-Central Tax (Rate) dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate) dated the 23rd October, 2017 or notification No. 78/2017-Customs dated the 13th October, 2017 or notification No.79/2017-Customs dated the 13th October, 2017 or all of them, 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.

Thus, a merchant exporter (recipient) can claim refund of ITC in respect of supplies on which the supplier has availed benefit of notification 40/2017 – Central Tax (Rate) dated 23.10.2017 (at concessional rate of 0.1%). This entire 0.1% paid (along with ITC of other supplies on which concessional rate of GST has not been availed but used in export of such goods) will be available as refund.

For other exports made by merchant exporters in respect of which concessional rate of GST has not been availed, the merchant exporters will be entitled to refund of accumulated ITC in terms of Rule 89(4) by resort to the following formula

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

It is important to note that for the purpose of above calculation, turnover of zero rated supply of goods WILL EXCLUDE turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both.

Similarly, Net ITC will also EXCLUDE input tax credit availed for which refund is claimed under sub-rules (4A) (supplies under deemed export provisions) or (4B) (supplies to

merchant exporters at concessional rate of duty) or both.

Q 81. How can the supplier to merchant exporter claim refund, since such supplies will not be considered as zero rated supplies?

Ans. The supplier who supplies goods at the concessional rate is also eligible for refund on account of inverted tax structure as per the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the CGST Act read with Rule 89(5) of the CGST Rules.

Q 82. Is the scheme of making supplies to merchant exporters at concessional rate of duty in terms of notification 40/2017-Central Tax (Rate) dated 23.10.2017 compulsory?

Ans. No. The benefit of supplies at concessional rate is subject to certain conditions and the said scheme is optional. The option may or may not be availed by the supplier and / or the recipient and the goods may be procured at the normal applicable tax rate.

Q 83. Can the merchant exporter export goods (in respect of which concessional rate of duty is availed by the supplier) on payment of IGST and claim refund of IGST?

Ans. No. The exporter of such goods can export the goods only under LUT / bond and cannot export on payment of integrated tax. In this connection, Rule 96(10) of the CGST Rules as amended from time to time may be referred.

Q 84. Will refund of Compensation Cess be also admissible under GST?

Ans. Yes. Circular No.1/1/2017-Compensation Cess issued by Board clarifies that provisions of section 16 of the IGST Act, 2017, relating to zero rated supply will apply mutatis mutandis for the purpose of Compensation Cess (wherever applicable), that is to say that:

- a) Exporter will be eligible for refund of Compensation Cess paid on goods exported by him [on similar lines as refund of IGST under section 16(3) (b) of the IGST, 2017]; or
- b) No Compensation Cess will be charged on goods exported by an exporter under bond and he will be eligible for refund of input tax credit of Compensation Cess relating to goods exported [on similar lines as refund of input taxes under section 16(3) (a) of the IGST, 2017].

Thus, refund of compensation Cess (if its on account of zero rated supplies) will be admissible to the claimant. The process and procedure for claim of such refund will be same as for refund of IGST (on both goods and services) and in respect of accumulated ITC of compensation cess.

Further, in cases of unutilised ITC of compensation cess availed on inputs in cases where

the final product is not subject to the levy of compensation cess, it has been clarified vide circular no. 45/19/2018-GST dated 30th May 2018, that refund of accumulated ITC can be claimed in such situations, however the rebate route i.e. payment of IGST and claiming refund of compensation cess of IGST paid will not be permissible in such cases. In such cases they cannot utilise the compensation cess paid on inputs for payment of IGST in view of the proviso to section 11(2) of the Cess Act, which allows the utilization of the input tax credit of cess, only for the payment of cess on the outward supplies. Accordingly, they cannot claim refund of compensation cess in case of zero-rated supply on payment of integrated tax.

Q 85. How can refunds of excess balance in the electronic cash ledger be claimed?

Ans. Excess balance in the cash ledger after making good all liabilities, would be available as refund to the registered person. Presently this refund is also available through RFD-01A procedure. Section 49(6) enables grants of refund of excess balance in the cash ledger and reads as under

Q 86. Is there any time limit within which refund of excess balance in cash ledger need to be submitted?

Ans. No. Refunds of excess balance in cash ledger can be claimed anytime. The law enables making the claim even at the time of filing monthly returns. No relevant date has been prescribed for such claims.

Q 87. A registered person pays IGST for a supply which is subsequently held to be intra-state. What is the relevant date, within which he has to file a claim for refund of IGST wrongly paid?

Ans. Section 77 of CGST Act, 2017, read with Section 19 of IGST Act, are the enabling provisions for grant of refund in such cases. These provisions use the words “.....shall be granted refund of the amount of Central/integrated tax so paid in such manner and subject to such conditions as may be prescribed....” Thus, refunds will have to be mandatorily granted. The stipulation in Section 54(1) that claims will have to be filed within 2 years from the relevant date, will not apply for a claim under this category.

Q 88. Interest on delayed payment (if refund is not paid within 60 days from the date of receipt of application) will be paid right from the first date of receipt of claim till the date of payment. Is this statement true?

Ans. As per section 56 of CGST Act, 2017, If any tax ordered to be refunded under section 54(5) to any applicant is not refunded within sixty days from the date of receipt of application under section 54(1), interest at such rate not exceeding six per cent. as may be

specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax. Thus, interest liability will start after expiry of 60 days of receipt of application.

Q 89. If refund arises on account of finalisation of provisional assessment under GST, will the registered person need to make a separate claim for refund of such amount under Section 54 or will it be granted suo-motu consequent to finalisation?

Ans. If a claim of refund arises on account of finalisation of provisional assessment, the registered person will have to file a refund claim under Section 54, claiming the consequential refund. Such refunds will not be granted suo-motu by the officer finalizing the refund claim.

Q 90. What is the relevant date within which claim has to be filed for refunds arising as a consequence of finalisation of provisional assessment?

Ans. Such claims need to be filed within 2 years from the date of adjustment of tax after the final assessment thereof.

Q 91. What documents need to be submitted along with the claim of refund (for refunds arising as consequence to finalization of provisional assessment)?

Ans. The Refund claim needs to be filed in GST RFD-01A on the common portal accompanied by the following documents

- (a) 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;
- (b) 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 two lakh rupees;;
- (c) a Certificate in Annexure 2 of FORM GST RFD-01A 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 two lakh rupees:

Q 92. Is manual filing of claims permitted for refunds arising as a consequence of finalisation of provisional assessment?

Ans. No.

Q 93. In case refund claim is filed as a consequence of any Court judgement, when will

interest become due?

Ans. For a claim of refund of tax paid during the course of proceedings & which the Courts have held as not payable on merits, interest liability would arise under Section 56 of the CGST Act. i.e interest would be payable if the amount has not been refunded within 60 days of filing of application for refund by the claimant. That is to say, after the judgment or decree holding the tax to be not payable, the appellant will have to file a claim under Section 54(1) and thereafter if the amount is not refunded within 60 days of filing of application, interest liability will arise for Revenue.

The position would be different in case of refund of pre-deposit. For refund of amounts paid as pre-deposit (in terms of Section 107(6) & 112 (8)) interest liability will arise in terms of Section 115 of the CGST Act. As per Section 115 of CGST Act, where an amount paid by the appellant under sub-section (6) of section 107 or sub-section (8) of section 112 is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount. Thus, interest liability starts from the date of making of payment (and not the date of filing of application for refund) in the case of amounts paid as pre-deposit.

Q 94. What are the documentary evidences that need to accompany the refund claim, in cases where the claim arises a consequence of any court order or judgement?

Ans. Such refund claims are to be filed in form GST RFD-01 on the common portal. The application has to be accompanied by the following documentary evidences in Annexure 1 in Form GST RFD-01A, as applicable, to establish that a refund is due to the applicant, namely:-

- (a) 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 subsection (6) of section 107 and subsection (8) of section 112 claimed as refund;
- (b) 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 two lakh rupees;;
- (c) 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 two lakh rupees:

Q 95. What is unjust enrichment. Does the concept apply in GST?

Ans. The Hon'ble Supreme Court in the case of Sahakari Khand Udyog Mandal Ltd. v/s

Commissioner of Central Excise & Customs as reported in 2005 (181) ELT 328 S.C. has defined 'unjust enrichment' as under:

(a) 'Unjust enrichment' means retention of a benefit by a person that is unjust or inequitable. 'Unjust enrichment' occurs when a person retains money or benefits which in justice, equity and good conscience, belong to someone else.

(b) That no person can be allowed to enrich inequitably at the expense of another. A right of recovery under the doctrine of 'unjust enrichment' arises where retention of a benefit is considered contrary to justice or against equity

The concept is inbuilt in Section 54(5) read with 54(8) of the CGST Act, 2017. Every claim of refund sanctioned will be credited to the Consumer Welfare Fund in terms of section 54(5) of CGST Act, 2017. It will, instead of being credited to the fund, be paid to the claimant in situations mentioned in Section 54(8). Thus, the principle will not apply to refund claims arising on account of zero rated supply, refund of accumulated ITC on account of zero rated supply and inverted rate structure, where wrong tax is paid (IGST instead of C+SGST & vice versa), where tax has been paid on advances but no supply is made and no invoice has been issued. These are cases where the principle of unjust enrichment is not applicable and the proper officer need not satisfy himself whether the incidence of tax has been passed on to any other person in such cases. In all other cases, refund will be sanctioned to the claimant only if the claimant demonstrates that the incidence of tax has not been passed on to any other person.

Q 96. What is the standard of proof required under GST to demonstrate non-passing of incidence of tax to any other person?

Ans. Rule 89(2) (l) & (m) deals with documentary evidence pertaining to passing of incidence of tax. In cases where the amount of refund claim does not exceed ₹2,00,000/- 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, Where the claim exceeds ₹2,00,000/- a Certificate in Annexure 2 of FORM GST RFD-01A 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.

However, the aforesaid declaration/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 section 54 (8). That is for cases covered by clause a to d & f of Section 54, since by default the doctrine of unjust enrichment does not apply, there is no requirement of any declaration or certificate to prove non passing of the incidence of tax to any other person.

Explanation to Rule 89 expressly states that 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. Thus, if Revenue has cogent evidence to show that the amount of tax

has been recovered from the recipient, then it will be presumed that the incidence of tax has been passed on the consumer and the declaration/certificate given by the applicant will not suffice to cross the bar of unjust enrichment.