

# Refunds under GST [Section 54 to 58 r/w Rule 89 - 97] [1/7]

## BACKDROP

Exporters are the backbone of the nation, thus, in order to promote exports, certain incentives shall be provided to exporters. There are various schemes and benefits available to exporters under GST, Customs & FTP. In GST, refund has been categorised into 3 aspects, namely, refund of unutilised input tax credit, refund of tax paid on export of goods or services, & refund in certain circumstances.

It is very relevant to understand doctrine of unjust enrichment before beginning with GST. The principle of unjust enrichment states that no person can be enriched at another's expenses and the person who enriches or obtains benefit at another's expense and causing loss to another, he shall be required to reimburse or restitution a reasonable value of those services and money which he received unfairly. In Indirect Taxes, presumption is that the tax burden has been shifted to the recipient unless otherwise proved. If a regd. person has shifted the burden of tax on recipient, supplier cannot claim refund of the same.

## SECTION OUTLAY

Section [of CGST Act]	Description	Rule	Description
<b>(I) REFUND OF TAX - TIME LIMIT TO APPLY   CONCEPT OF RELEVANT DATE   DOCUMENTATION</b>			
54	Refund of tax		
54(1)	Time limit to claim refund of tax & interest - 2 years from relevant date		
Explanation 2 to section 54	Relevant Date		Rule 89(1A) read with Circular No. 162/18/2021-GST
<b>(II) REFUND TO SPECIALISED AGENCIES</b>			
54(2)	Refund to specialised agency	95	Refund of tax to certain persons
Section 55	Refund in case of consulate or Embassy of foreign countries		
<b>(III) REFUND OF UNUTILISED ITC</b>			
54(3)	Refund of unutilised input tax credit in certain situation	96A	Letter of Undertaking Order sanctioning refund Credit of the amount of rejected refund claim
Section 16 of IGST Act	Zero rated supplies	89	Manner of application of refund, formula to compute and documentation. (Discussed later)
54(10)	With-holding of refund by proper officer		
<b>(IV) DOCUMENTARY EVIDENCE</b>			
Section 54(4) of CGST Act	Documentary evidences and practicing CA CMA certificate	Rule 89(2)(m)	Cases where CA Certificate is required & Cases where not required
Circular 125/44/2019	Master circular for refund (Documentary evidence is discussed here)		
Section 54(8)	Cases where refundable amount shall be paid to applicant. Discussed provision here as Rule 89(2)(m) gives the reference.		

**"When I dare to be powerful, to use my strength in the service of my vision, then it becomes less and less important whether I am afraid."**

By CA Keval Mota

<b>(V) PROVISIONAL REFUND, FINAL REFUND ORDER AND DISBURSMENT PROCESS</b>			
Section 54(6) of CGST Act	Provisional Refund	Rule 90	Acknowledgment of refund claim
Circular 125/44/2019	Clarifications	Rule 91	Sanction of provisional refund
54(5)	Refund Order on satisfaction of application	Rule 92	Order sanctioning refund
54(7)	Time limit to issue refund order	Rule 93	Recredit to Electronic credit ledger
<b>(VI) REFUND OF TAX TO APPLICANT RATHER CREDITING INTO CONSOLIDATED FUND OF INDIA</b>			
54(8)	Cases where refundable amount shall be paid to applicant.		
54(8A)	Disbursement of refund of State Tax		
<b>(VII) OTHER PROVISIONS</b>			
54(9)	Refund shall be only in accordance with section 54(8) of CGST Act unless contrary is contained in any order / judgment		
54(11)	With holding of Refund due to subject matter of appeal		
54(12)	Refund of with-held amount due to subject matter of appeal - Interest not to exceed 6% pa		
54(13)	Refund in case of Casual Taxable person and non-resident taxable person		
54(14)	Refund under each tax head shall be minimum Rs. 1,000/-		
Para 60	Circular 125/44/2019		
<b>(VIII) DISCUSSION ON RULE 89 &amp; OTHER CASES OF REFUND</b>			
[1]	Application for Refund of Tax, Interest & Penalty [R. 89(1)]		
[2]	Refund relating to Balance in Electronic Cash Ledger [Proviso 1 to R. 89(1)]		
[3]	Refund to Supplier of SEZ [Proviso 2 to R. 89(1)]		
[4]	Refund in case of Deemed Exports [Proviso 3 to R. 89(1) read with Rule 89(2) & 89(4A)]		
[5]	Refund to CTP & NRTP u/s 27 of CGST Act [Proviso 4 to R. 89(1)]		
[6]	Refund to Exporter of goods or services exported under LUT [Section 54(3) read with Rule 89(4) & 89(2)]		
[7]	Documentation as per Rule 89(2) of CGST Rules		
[8]	Debit in Electronic Credit Ledger [R. 89(3)]		
[9]	Refund formula for zero rated supply of goods or services under LUT [R. 89(4)]		
[10]	Refund in case of inverted duty structure [R. 89(5)] [Circular 135/05/2020 – GST]		
[11]	Export of Goods or services on payment of IGST [Rule 96]		
[12]	Realisation of Export Proceeds [Rule 96B inserted vide Notification No. 16/2020 – CT dtd. 23rd March, 2020]		
[13]	Refund to a retail outlet established in the departure area of an international airport (R. 95A of CGST Rules, 2017 & Circular No. 106/25/2019-GST dated 29th June, 2019 (Amendment))		
[14]	Other circulars clarifying on refund aspects [Circular No. 137/07/2020-GST]		
<b>(IX) INTEREST ON DELAYED REFUNDS</b>			
Section 56	Interest on delayed refunds	94	Order sanctioning interest on delayed refunds
<b>(X) CONSUMER WELFARE FUNDS</b>			
Section 57	Consumer Welfare fund	97	Amounts to be credited to/paid from consumer welfare fund

# Refunds under GST [Section 54 to 58 r/w Rule 89 - 97] (2/7)

## Basic Provisions:

### (i) Basic Time-limit to file refund application:

As per Section 54(1) r/w Rule 89, refund shall be claimed by a registered person **SUBJECT TO RULE 10B (Aadhar Authentication)** in **PRESCRIBED MANNER** by making application before the expiry of **2 YEARS FROM THE RELEVANT DATE (Discussed later)**.

Refund on Account of E - Cash Ledger balance shall be made in return furnished u/s 39 (*Practically it is not possible, a regd. person has to apply for refund*). **The 2 years' time limit does not apply to refund on account of electronic cash ledger (Circular No. 166/22/2021-GST).**

### (ii) Refund Scenarios: It shall be noted that refund can be arising on account of

PART (A) Zero rated supplies with & without payment of tax, inverted duty structure, deemed exports, merchant exports  
PART (B) Other circumstances (such as refund of wrong tax, refund to CTP, NRTP etc.)

#### (A) Zero rated supplies with & without payment of tax

The basic flow of sections through which refund on account of Zero rated supply is governed tabulated below:

Section	Description
<b>7 of CGST Act: Supply</b>	Regards an activity as "Supply"
<b>2(5) &amp; 2(6) of IGST Act</b>	Defines Exports of Goods & Exports of services
<b>7 of IGST Act: Interstate Supplies</b>	❖ Section 7(5)(a) regards an activity where LOS is in India and POS as outside India to be an Interstate supply; ❖ Section 7(5)(b) states, where supply is made by / to SEZ / SEZ developer is "interstate supply"
<b>5 of IGST Act: Charge</b>	IGST shall be levied on Inter-state supplies
<b>16 of IGST Act: Zero Rated Supply</b>	Export of goods/services & supplies to SEZ / SEZ developer would be treated as zero rated supplies. Export of exempted supplies is also a zero rated supply. Further, it may be exported without LUT.
<b>54 of CGST Act</b>	Refund in certain circumstances
<b>Rule 89 to 97</b>	Manner of claiming refund, documentation, procedure etc.
<b>Rule 96A</b>	If a person has LUT he has to export goods within 3 months 15 days from date of invoice. In case of services he shall realize export proceeds within 1 year 15 days from date of invoice. Otherwise liable to pay tax with interest.

#### Zero rated supplies on payment of IGST (NO FORMULA is required - Whatever paid is refunded)

The **REFUND OF OUTPUT TAX** in this case would be available as refund

##### Imp Points:

- ❖ **Tax Cannot be collected:** In case of zero rated supplies tax cannot be collected from recipient
- ❖ **Payment of Tax:** In case of with payment of tax, IGST is paid by supplier through utilisation of input tax credit & cash ledger.
- ❖ **No debit required while filing refund:** In case of zero rated supplies on payment of IGST, at the time of paying IGST, e-credit ledger is debited, thus, at the time of refund application again debiting E - credit ledger is not required.
- ❖ **When Beneficial:** When a person has huge ITC of capital goods, he can pay tax on ZRS through ITC of CG, and claim refund of output tax (In case of refund of unutilised ITC, ITC paid on CG is not refundable)
- ❖ **Documentation:** In case of ZRS of goods, shipping bill is itself a refund application, whereas in case of ZRS of services, a refund application has to be made by applicant with requisite documents.

[Example: If Mr. A has ITC of Rs. 100 and does not have LUT thus he will pay IGST on Exports say Rs. 250, he will pay it through ITC Rs. 100 & cash Rs. 150 and would obtain refund of 250 (Refund Received = 250 but actual benefit is only Rs. 100 because Rs. 150 was paid by him only in cash)]

#### Zero rated supplies without payment of IGST (See discussion in next part)

- ❖ No IGST is required to be paid on zero rated supply when a person has Letter of Undertaking.
- ❖ **Refund of unutilised ITC** is available only in 2 cases i.e., ZRS under Bond/LUT (other than when goods suffered export duty) and Inverted duty structure (discussed later).
- ❖ Refund application has to be filed in prescribed manner in Rule 89
- ❖ Debit entry in electronic credit ledger would be passed (Automatically on Application)

**Example: If Mr. A has ITC of Rs. 100 and has LUT thus he will not pay IGST on Exports, and he will claim refund of ITC of Rs. 100. Thus, in both scenarios, net benefit is Rs. 100.**

(Many students think in first case, if one is paying tax and obtaining refund what is benefit. Thus example was given.

(Detailed discussion to be done later on)

## 1. Zero Rated Supply of Goods or Services WITHOUT PAYMENT OF TAX [S. 54(3), r/w R. 89(4)]

As per Section 16 of IGST Act, export of goods or services is a zero rated supply. Further, supply of goods or services **TO SEZ is also zero rated supply**. It is imperative to note that the formula is for Zero rated supplies **WITHOUT PAYMENT OF TAX**.

### (i) Formula to Compute Refund

$$\text{Refund Amount} = \text{Net ITC} \times \frac{\text{Turnover of Zero-Rated supply of Goods \& Services}}{\text{Adjusted Total Turnover}}$$

#### Analysis of Formula

<b>(i) Refund Amount [Para 37 of Circular 125]</b>	<p>Refund amount shall be lower of (a), (b) or (c) as below:</p> <p><b>a) Total as per Formula:</b> The maximum refund amount as per the formula in rule 89(4) or rule 89(5) of the CGST Rules [formula is applied on the consolidated amount of ITC, i.e. Central tax + State tax/Union Territory tax + Integrated tax];</p> <p><b>b) Balance at end of Tax period (after covering said tax period):</b> The balance in the electronic credit ledger of the applicant at the end of the tax period, for which the refund claim is being filed after the return in FORM GSTR-3B for the said period has been filed; and</p> <p><b>c) Balance in Credit Ledger at the time of filing refund:</b> The balance in the electronic credit ledger of the applicant at the time of filing the refund application.</p> <p>After calculating the LEAST OF THE THREE AMOUNTS, as detailed above, the equivalent amount is to be debited from the electronic credit ledger of the applicant as <b>REFUND</b> in the following order:</p> <p>a) Integrated tax, to the extent of balance available;</p> <p>b) Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger (i.e., State tax/Union Territory tax, in this case)</p>
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<b>(ii) Net ITC</b>	<p>Net ITC here means Input Tax credit on <b>Inputs &amp; Input Services (Not Capital Goods), other than R. 89(4A) &amp; 89(4B) of CGST Rules</b>. However, <b>ITC of capital goods would be allowed to be utilised, but not allowed to be claimed as refund</b>. [Note: Thus, when GST is paid by recipient to its supplier who effects deemed exports, such ITC shall be excluded]</p> <p><b>Analysis:</b></p> <p>a) Net ITC does not mean ITC remaining after payment of output tax liability if any. Net ITC is the total ITC for a particular period (without considering utilisation).</p> <p>b) Net ITC shall be sum total of CGST, SGST &amp; IGST and not to be calculated individually</p> <p>c) When a registered person is a recipient of deemed export supplies (discussed later) and his supplier collects GST from such recipient, recipient is entitled to ITC &amp; refund thereon, the refund of such deemed export ITC is available under rule 89(4A) thus, to be reduced from here.</p>
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<b>(iii) Turnover of Zero-Rated supply of Goods</b>	<p>(a) The value of zero-rated supply of goods made during the relevant period without payment of tax under bond or LUT i.e., Lower of</p> <ul style="list-style-type: none"> <li>❖ <b>the Free on Board (FOB) value declared in the Shipping Bill or Bill of Export form or</b></li> <li>❖ <b>the value declared in tax invoice or bill of supply,</b></li> </ul> <p><b>OR,</b></p> <p>(b) 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 (<i>Refer Sum in Amendment Sheet for More Clarity</i>) whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both [<b>For Notes on Rule 89(4A) &amp; 89(4B), refer discussion below in Adjusted Total Turnover</b>]</p> <p>As per Rule 96B, if proceeds from <b>EXPORT OF GOODS WITH OR WITHOUT PAYMENT OF TAX</b> are not realised within time period as specified in FEMA (9 months from date of export, 15 months in case of export of goods to warehouse), then refund granted would be recovered u/s 73 or 74 with interest u/s 50. Further, if amount is realised thereafter, exporter has to intimate the department within 3 months from realisation of proceeds, then refund would be sanctioned accordingly.</p>
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# Refunds under GST [Section 54 to 58 r/w Rule 89 - 97] (3/7)

## PART A(1). Zero Rated Supply of Goods or Services WITHOUT PAYMENT OF TAX [S. 54(3), r/w R. 89(4)]

### Analysis (Contd.)

	<b>Analysis:</b>	<p>(i) Even if you have LUT, you can undertake transaction without LUT. In this “turnover” only turnover made under LUT shall be included, not the turnover on which IGST is paid.</p> <p>(ii) For 1.5 times of like goods domestically supplied, it shall be noted that the domestic supplies of products exported (if any) shall be taken and not of other product’s domestic supply. The calculation shall be on basis of price per unit then multiplied with export quantity, so that it can be on PAR.</p> <p>(iii) As per Para 47 of Circular 125/44/2019, the value of ZRS of goods shall be taken lower of shipping bill or inv value.</p>						
<b>(iv) Turnover of Zero-Rated supply of Services</b>	<p>Services are intangible thus it can only be proved as exported or supplied to SEZ on consideration basis. Thus, yardstick to figure out what had been exported as service is consideration. Ergo,</p> <p>Zero-Rated Supply of Service =</p> <ul style="list-style-type: none"> <li>❖ <b>Payment Received during relevant period</b> for zero-rated supply of service (+)</li> <li>❖ <b>pre-received consideration of previous relevant period</b> whose service has been completed in current period (-)</li> <li>❖ Pre-received consideration in current period for provision of service subsequently (i.e. <b>Advances received</b>)</li> </ul>							
	<b>Analysis:</b>	<p>(i) In simple words, in order to be added in ZRSS, both the conditions shall be fulfilled viz., Consideration shall be received as well as Services shall be provided. Thus, if consideration is received prior to service, turnover shall be considered when services are provided, whereas, if service is provided prior to consideration, then, it shall be considered when such consideration is received.</p>						
<b>(v) Adjusted Total Turnover (Denominator) [R. 89(4) of CGST Rules]</b>	<p><b>Adjusted Total Turnover shall include</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;">Include (+)</th> <th style="width: 50%;">(-) or exclude</th> </tr> </thead> <tbody> <tr> <td>Turnover in state / UT for supply of Goods &amp; Services (Excluding zero rated services)</td> <td> <ul style="list-style-type: none"> <li>➤ CGST, SGST/UTGST, IGST &amp; Cess [S. 2(112)]</li> <li>➤ Exempt Supplies other than zero rated supplies of exempt supplies</li> </ul> </td> </tr> <tr> <td>Zero rated services as added in (iv) above</td> <td> <ul style="list-style-type: none"> <li>➤ Turnover of R.89(4A) &amp; 89(4B) of CGST Rules, 2017</li> </ul> </td> </tr> </tbody> </table> <p><small>Clarification: It is by virtue of Circular 147/03/2021 - GST it has been clarified that the restriction of 1.5 times 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.</small></p> <p><b>Note on Exclusion of Rule 89(4A) / 89(4B) turnover:</b></p> <p>(i) <b>Turnover of Recipient when recipient claims refund:</b> When goods, which are procured as deemed exports and refund is claimed by recipient, are further exported, such export turnover of goods shall <b>not be added</b>.</p> <p>(ii) <b>Turnover of Supplier when recipient claims refund:</b> When goods are sold as deemed exports and refund is claimed by recipient such turnover of deemed exports <b>shall be added</b> in supplier’s turnover.</p> <p>(iii) <b>Turnover of Recipient when supplier claims refund:</b> When goods, which are procured as deemed exports and refund is claimed by supplier, are further exported, such export turnover of goods <b>shall be added</b> into consideration.</p> <p>(iv) <b>Turnover of supplier when supplier claims refund:</b> When goods are sold as deemed exports and refund is claimed by supplier then such turnover of deemed exports <b>shall not be added</b> in supplier’s turnover.</p>	Include (+)	(-) or exclude	Turnover in state / UT for supply of Goods & Services (Excluding zero rated services)	<ul style="list-style-type: none"> <li>➤ CGST, SGST/UTGST, IGST &amp; Cess [S. 2(112)]</li> <li>➤ Exempt Supplies other than zero rated supplies of exempt supplies</li> </ul>	Zero rated services as added in (iv) above	<ul style="list-style-type: none"> <li>➤ Turnover of R.89(4A) &amp; 89(4B) of CGST Rules, 2017</li> </ul>	
Include (+)	(-) or exclude							
Turnover in state / UT for supply of Goods & Services (Excluding zero rated services)	<ul style="list-style-type: none"> <li>➤ CGST, SGST/UTGST, IGST &amp; Cess [S. 2(112)]</li> <li>➤ Exempt Supplies other than zero rated supplies of exempt supplies</li> </ul>							
Zero rated services as added in (iv) above	<ul style="list-style-type: none"> <li>➤ Turnover of R.89(4A) &amp; 89(4B) of CGST Rules, 2017</li> </ul>							
<b>Relevant Period</b>	<p>Relevant period means the period for which the claim has been filed. A person 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 <b>[Circular No.135/05/2020 - GST overrides Circular 125/44/2019 to that extent]</b></p>							
<b>Documentation</b>	<p>(i) <b>[Export of goods]</b> Declaration under second and third proviso to section 54(3) [Drawback &amp; Export Duty]</p> <p>(ii) <b>[In all cases]</b> Undertaking in relation to sections 16(2)(c) and section 42(2)</p> <p>(iii) <b>[In all cases]</b> Statement 3 under rule 89(2)(b) [Manually to be filled after validating statement 3A]</p> <p>(iv) <b>[In all cases]</b> Statement 3A under rule 89(4) [Contains details of invoice, shipping bill, FIRC (N.A. in goods), Port code, etc. Json file to be uploaded, created from excel utility]</p> <p>(v) <b>[In all cases]</b> Copy of GSTR-2A of the relevant period [Excel copy from GST Portal ONLY], ISD, RCM credit, import of goods can be refunded even though not reflected in GSTR 2A (Clarified by Circular 139/09/2020 r/w Circular 135)</p> <p>(vi) <b>[In all cases]</b> Statement of invoices (Annexure-B) [Annexure B shall Tally with ITC taken in GSTR 3B, HSN, Input/Service/CG Bifurcation shall be done]</p> <p>(vii) <b>[In case of Export of services]</b> Documentation as per Rule 89(2)(c) [statement of BRC/FIRC]</p> <p>(viii) <b>[In case of supplies to SEZ]</b> Evidence regarding the endorsement that supply of goods or services is made to a Special Economic Zone unit or a Special Economic Zone developer</p>							

*[Rule 89(2) read with Circular 125, vetted with my personal experience with department]*

## PART A(2). Inverted Duty Structure [S. 54(3) r/w R. 89(5)]

Meaning of Inverted Duty Structure	<p>Generally in case of specific manufacturing industry (such as paper, raincoat), procurement of inputs (input services &amp; capital goods not covered) are made at higher rate of GST, whereas the finished output attracts lower rate of tax which leads to accumulation of input tax credit. Government allows the refund of unutilised ITC in a specific manner which is to be learnt in below paras.</p> <p>It would be worth noting that where Output tax rate is Nil or where Outward supply is an exempt supply, it would NOT constitute inverted duty structure &amp; refund of unutilised ITC would not be available.</p>	
Formula	$\frac{\text{Turnover of Inverted supply of goods \& services}}{\text{Adjusted Total Turnover}} \times \text{Net ITC (-)}$	<p><b>Tax payable on such inverted rated supply of goods and services x Net ITC / ITC availed on inputs and input services</b></p>
<b>(i) Refund Amount</b>	(Same discussion as made in (1) above)	
<b>(ii) Net ITC</b>	Net ITC shall mean input tax credit availed <b>ON “INPUTS” (ONLY INPUTS NEITHER INPUT SERVICES NOR CAPITAL GOODS)</b> during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both.	
<b>(iii) Adjusted Total Turnover</b>	Adjusted Total Turnover & Relevant period definitions are same as discussed in (1) above	
Department Clarifications	<p>(a) Manufacturer supplying to merchant exporter claim refund of tax under Rule 89(5) of CGST Rules</p> <p>(b) Refund of accumulated input tax credit (ITC) NOT ALLOWED on account of reduction in GST Rate as inverted duty structure. (Circular 135/05/2020 – GST)</p> <p>(c) As per Para No. 54 of Circular 125/44/2019, 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. (Thus, even if some inputs are of equivalent rate of output, they would also be covered in Net ITC.</p> <p>(d) As per Para 62 of Circular 125/44/2019; 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. Thus, it shall be included in Net ITC.</p> <p><b>(e) Where goods are purchased under normal rate, but sold under concessional rate under any notification, in such cases, refund of unutilised ITC can be claimed under inverted duty structure.</b></p>	
<b>Documentation</b>	<p>(i) Declaration under second and third proviso to section 54(3) <i>[Seems irrelevant but circular has mentioned this requirement]</i></p> <p>(ii) Declaration under section 54(3)(ii) [Not engaged in exempt supply]</p> <p>(iii) Undertaking in relation to sections 16(2)(c) and section 42(2)</p> <p>(iv) Statement 1 under rule 89(5) [Online Manually]</p> <p>(v) Statement 1A under rule 89(2)(h) [A statement containing the number and the date of the invoices received and issued during a tax period]</p> <p>(vi) Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise</p> <p>(vii) <b>[In all cases]</b> Copy of GSTR-2A of the relevant period [Excel copy from GST Portal ONLY] RCM (on goods) credit, import of goods can be refunded even though not reflected in GSTR 2A (Clarified by Circular 139/09/2020 r/w Circular 135)</p> <p>(viii) Statement of invoices (Annexure-B) [Annexure B shall Tally with ITC taken in GSTR 3B, HSN, Input/Service/CG Bifurcation shall be done]</p>	

**"Whenever you find yourself on the side of the majority, it is time to pause and reflect."**

By CA Keval Mota

# Refunds under GST [Section 54 to 58 r/w Rule 89 - 97] (4/7)

## PART A(3). Deemed Exports [S. 147 of CGST Act r/w NN 48/2017 - CT dated 18.10.2017, R. 89(4A)]

### Meaning of Deemed Export & Logic behind the concept:

In Foreign trade policy we would learn, that various schemes have been announced to promote exports. Such schemes give the benefit of **duty free import of inputs & capital goods**. Thus, if imports would be duty free and indigenous procurement would be taxed, it would create an imbalance in economy. Accordingly, deemed export concept have been introduced in Indirect Taxes so that imported inputs / capital goods shall be at par with indigenous procurements. In deemed exports goods do not leave India, however, all the benefits available in case of exports are provided. There is no requirement of LUT. **[Note: Deemed exports can only be of GOODS not services]**

**Notified Deemed Exports:** As per Section 147 of CGST Act r/w NN 48/2017 - CT dtd. 18.10.2017 following would be treated as deemed exports.

- (i) Supply of goods by a registered person **AGAINST ADVANCE AUTHORISATION** (*Advance authorization is the scheme in FTP which allows a person to import goods without payment of customs duty on the basis of authorization subject to various conditions discussed in FTP chapter*)  
**Analysis:** If a recipient has advance authorisation & goods are sold to him, such supply would be called as deemed exports. The purpose of procurement by AA holder is to use that product in export product.
- (ii) Supply of capital goods by a registered person **AGAINST EXPORT PROMOTION CAPITAL GOODS AUTHORISATION (EPCG)** (*EPCG is a scheme wherein an exporter of goods may procure capital goods without payment of customs duty on fulfilment of certain conditions*)  
**Analysis:** If a recipient has EPCG authorisation & goods are sold to him, such supply would be called as deemed exports. The purpose of procurement by EPCG holder is to use that capital goods in manufacturing export product.
- (iii) Supply of goods by a registered person **TO AN EXPORT ORIENTED UNIT (EOU)**, Electronic Hardware Technology Park Unit (EHTP) or Software Technology Park Unit (STP) or Bio-Technology Park Unit (BTP).
- (iv) Supply of gold by Bank or Public Sector Undertaking against AA

### Concept of Refund in case of Deemed Exports [R. 89(4A) r/w Departmental Clarification [Para 41 of Circular 125/44/2019]

As per Proviso 3 to Rule 89, **refund in case of deemed exports can be claimed 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.

### Examples to Magnify the concept

#### CASE STUDY 1 [SUPPLIER CLAIMING REFUND]:

Mr. Ram, a registered supplier, supplies to EOU, Mr. Ram supplies the goods at Rs. 50,000 (excl. IGST @ 18%), Mr. Ram collects Rs. 50,000/- from EOU. Thus, in this case, Mr. Ram would be liable to pay tax of Rs. 9,000/- IGST (by ITC or cash) and would be eligible to claim refund of Rs. 9,000/- under 3<sup>rd</sup> proviso to rule 89(1).

Here Mr. Ram has to submit that, EOU will not avail ITC nor obtain refund of such tax mentioned in tax invoice.

#### CASE STUDY 2 [RECIPIENT CLAIMING REFUND]:

Mr. Ram, a registered supplier, supplies to EOU, Mr. Ram supplies the goods at Rs. 59,000 (incl. IGST @ 18%), Mr. Ram collects Rs. 59,000/- from EOU. Thus, in this case, Mr. Ram would be liable to pay tax of Rs. 9,000/- IGST (by ITC or cash), however he would not be eligible to claim refund of Rs. 9,000/- as burden of tax has been shifted to recipient. The recipient would be eligible to claim the refund of Rs. 9,000/- under rule 89(4A).

Here EOU has to submit a declaration that supplier has not claimed refund to that extent.

#### OTHER CLARIFICATIONS:

- ❖ **ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Section 17 of the CGST Act, 2017.**
- ❖ **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. Thus, it is not to be added in Net ITC.**

## PART A(4). Merchant Exports [R. 89(4B) r/w NN 40/2017 - CTR or 41/2017 - ITR dated 23.10.2017]

**As per Rule 89(4B)**, where the person claiming refund of unutilised input tax credit on account of zero rated supplies without payment of tax has received supplies under benefit of below notifications, the refund to that extent shall be granted under R. 89(4B)-

- (a) **Merchant Export Transactions:** Where person claiming refund of unutilised ITC has received supplies on which manufacturer supplier has availed the benefit of supply of goods to merchant exporters (exporter) at concessional rate of 0.1% (if Intra-state then CGST, SGST 0.05% each)
- (b) **Exemption from Customs Duty:** The zero rated supplier claiming refund of unutilised ITC has availed the benefit of Notification No. 78/2017-Customs, dated the 13<sup>th</sup> October, 2017, or Notification No. 79/2017-Customs, dated the 13<sup>th</sup> October, 2017.

### Important Note:

**Having LUT with Recipient - a pre-condition to procure goods at concessional rate:** As per Rule 96(10) of CGST Rules, where a person claims refund of unutilised ITC on account of zero rated supplies, he shall not avail supplies on which supplier has taken benefit of clauses (a) & (b) as enunciated above. Thus, manufacturer supplier can only supply goods at concessional rate only if recipient (merchant exporter) is having LUT. If a merchant exporter does not have LUT, he **cannot procure goods at concessional rates**.

### Illustration:

Mr. Rajaram supplies goods for Rs. 50,000/- (GST Rate 18%) to Mr. Bhola ram, Mr. Bhola ram is going to supply it to Sundaram at Rs. 60,000/- (excl. GST). Mr. Sundaram claims that he has LUT, thus requested Mr. Bhola ram to supply it at concessional rate of 0.1%. In this case, scenarios of refund would be as below:

#### (A) Refund to Mr. Bhola ram [Manufacturer supplier] | Rule 89(5)

Mr. Bhola ram can claim refund arising due to inverted duty structure, as input tax rate (18%), being higher than output tax rate (0.1%).

#### (B) Refund to Sundaram [Merchant Exporters] | Rule 89(4B)

Sundaram can claim refund of ITC paid on transaction, on which its supplier has availed benefit of Notification 41/2017 - CTR, under rule 89(4B)

### Documentation: [Not mentioned in circular, below is documentation as per my own experience with department]

Sr. No.	Declaration/Statement/Undertaking/Certificates to be filled online	Supporting documents to be additionally uploaded
1	Declaration under second and third proviso to section 54(3)	Copy of GSTR-2A of the relevant period
2	Declaration under section 54(3)(ii)	Statement of invoices (Annexure-B)
3	Undertaking in relation to sections 16(2)(c) and section 42(2)	Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period (Omitted vide Circular 135/05/2020-GST)
4	Statement 1 under rule 89(5)	<b>Purchase order from registered recipient</b>
5	Statement 1A under rule 89(2)(h)	<b>Endorsed copy of tax invoice</b>
		<b>Acknowledgment of warehouse operator</b>
	Imp Note: Exporter will MASK the details of recipient & value details while giving shipping bill to supplier for refund purpose.	<b>Shipping bill or bill of export with mentioning GSTIN and tax invoice of supplier</b> <b>Proof of export [EGM]</b>

### Basic Conditions for Concessional Supplies by Manufacturer supplier

- |  |   |   |
|--|---|---|
| <ul style="list-style-type: none"> <li>(i) Registered supplier to supply under tax invoice to regd. recipient</li> <li>(ii) Recipient to export goods within 90 days</li> <li>(iii) Shipping Bill to indicate GSTIN of supplier</li> <li>(iv) Recipient to be regd. with Export promotion council</li> </ul> | <ul style="list-style-type: none"> <li>(v) Recipient shall move goods directly to port /ICD or regd. warehouse from where it will be taken to port / ICD</li> <li>(vi) Recipient shall place order, and copy of such P.O. be submitted to proper officer of supplier and recipient</li> </ul> | <ul style="list-style-type: none"> <li>(vii) Warehouse keeper's acknowledgement shall be given to supplier and jurisdictional commr. of supplier</li> <li>(viii) Proof of export [EGM]</li> </ul> |
|--|---|---|

# Refunds under GST [Section 54 to 58 r/w Rule 89 - 97] (5/7)

## PART B: OTHER CIRCUMSTANCES OF REFUND

- (a) **Refund Voucher** - Supply which is not provided, either wholly or partially and for which invoice has not been issued or refund voucher has been issued. [S. 54(8)(c)]  
**Documentation [R. 89(2)(k)]:** A statement showing the details of the amount of claim on account of excess payment of tax;
- (b) **Refund of Wrong Tax paid:** - CGST and SGST paid for Inter-state transaction or IGST paid for transaction HELD to be Intra state transaction. [S. 54(8)(d) of CGST r/w S. 77 of CGST]  
**Documentation [R. 89(2)(j)]:** A statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply
- (c) **Refund to CTP/NRTP** (subject to furnishing all returns for the period of registration) [S.54(13) of CGST Act]
- (d) Refund of **Balance in Electronic Cash Ledger** after payment of tax, interest, fees, penalties or any other amount payable. [S. 49(6) of CGST Act] (It can be claimed in return u/s 39 i.e. GSTR 3B/4/7)
- (e) IGST paid by tourist leaving India.
- (f) Tax becoming **refundable on consequence of any judgement**, order or direction of appellate authority, appellate tribunal; or court [S. 54(9) of CGST]
- (g) On **finalization of provisional assessment** (contained in detail in Assessment Chapter) (i.e. tax payer had paid more at the time of provisional assessment & becoming refundable to him while final assessment)  
  
**Documentation [R. 89(2)(i)]:** 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.
- (h) **Refund of Tax** paid on purchase made **by UN bodies or embassies**. [S. 54(2) of CGST r/w S. 55 of CGST] (Such persons have to claim refund once in every quarter but before expiry of **2 years** from last day of quarter.) They can also claim refund of IGST paid on Import of Goods

**Notes:**

(i) **Declaration that Tax Incidence have not passed [R. 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 is **upto Rs. 2,00,000/-**. In case refund claim exceeds Rs. 2,00,000/- then CA Certificate would be required to be attached. However, in above 5 cases, CA /CMA certificate in Annexure 2 of RFD - 01/ self-declaration is also **NOT required**. [R. 89(2)(m)]

However, in below cases, such declaration is not required:

- ❖ Export of goods or services on payment of IGST [S. 54(8)(a)]
- ❖ Refund of Unutilised input tax credit [S. 54(8)(b)]
- ❖ Refund voucher [S. 54(8)(c)]
- ❖ Refund of Wrong Tax Paid [S. 54(8)(d)]
- ❖ Notified Applicants [S. 54(8)(f)]
- ❖ **Refund on account of E – cash ledger (Circular No. 166/22/2021-GST)**

### REFUND TO A RETAIL OUTLET ESTABLISHED IN THE DEPARTURE AREA OF AN INTERNATIONAL AIRPORT (R. 95A OF CGST RULES, 2017 & CIRCULAR NO. 106/25/2019-GST DATED 29<sup>TH</sup> JUNE, 2019)

*Retail outlets (i.e. Duty Paid Shops & Duty Free Shops) established in departure area of an international airport making tax free supply of indigenous goods to a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes (hereinafter referred to as eligible passenger) are entitled to claim refund of applicable CGST+SGST/UTGST or IGST paid on inward supply of such goods. Therefore, retail outlets will supply such indigenous goods without collecting any taxes from the eligible passenger and may apply for refund.*

*Thus, it would be appropriate to say here that the refund to be granted to retail outlets is not on account of the accumulated input tax credit but is refund based on the invoices of the inward supplies of indigenous goods received by them.*

*Application for refund: Retail outlet shall furnish the application for refund claim in prescribed form on a monthly/quarterly basis along with self-certified compiled information of invoices issued for the supply made during the month or the quarter, as the case may be, along with concerned purchase invoice.*

**Conditions for claiming refund:-**

*The refund of tax paid by the said retail outlet shall be available if-*

- (i) The inward supplies of goods were received by the said retail outlet from a registered person against a tax invoice;*
- (ii) The said goods were supplied by the said retail outlet to an outgoing international tourist against foreign exchange without charging any tax;*
- (iii) Name and GSTIN of the retail outlet are mentioned in the tax invoice for the inward supply; and*
- (iv) Such other restrictions or conditions, as may be specified, are satisfied.*

*The provisions of Rule 92 shall, mutatis mutandis, apply for the sanction and payment of refund under this Rule.*

By CA Keval Mota

**"Develop success from failures. Discouragement and failure are two of the surest stepping stones to success."**

**Note:** As per section 54(8), **except this 5 cases** and where refund is on account of 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; **the refund shall be credited to consumer welfare fund**

### CONCEPT OF RELEVANT DATE: REFUND APPLICATION SHALL BE MADE WITHIN 2 YEARS FROM RELEVANT DATE [Explanation 2 to Section 54]

Sr. No.	Case	Relevant Date
1.	Goods are exported by sea or air (With or without payment of tax)	The date on which the ship or the aircraft in which such goods are loaded, leaves India.
2.	Goods are exported by land (With or without payment of tax)	The date on which such goods pass the frontier.
3.	Goods are exported by post (With or without payment of tax)	The date of despatch of goods by the Post Office concerned to a place outside India.
4.	Supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods (Supplier or recipient of deemed exports claiming refund)	The date on which the return relating to such deemed exports is furnished (by supplier).  [Clarified by Circular No. 166/22/2021 dated 17 <sup>th</sup> November, 2021]
5.	Export of services (With or without payment of tax)	(i) Receipt of payment in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India or (ii) Issue of invoice Whichever is Later.
6.	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
7.	Refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3) [Inverted duty structure]	The due date for furnishing of return under section 39 for the period in which such claim for refund arises
8.	Tax is paid provisionally under this Act or the rules made Thereunder	The date of adjustment of tax after the final assessment thereof
9.	A person, other than the supplier	The date of receipt of goods or services or both by such person
10.	Other case	The date of payment of tax
11.	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	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. [Rule 89(1A) read with Circular No. 162/18/2021-GST]
12.	<b>Zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid</b>	<b>The due date for furnishing of return under section 39 in respect of such supplies.</b>

# Procedural Aspects in respect of Refund Filing [S. 54 r/w Rule 90 to 97] (6/7)



## Step 1: Application for Refund

- ❖ The applicant has to apply for refund **WITHIN 2 YEARS** from relevant date in **FORM GST RFD - 01**, which we have already learnt.
- ❖ The refund application shall be supported by documents as specified in Rule 89(2) read with Circular 125/44/2019
- ❖ The application once submitted, can be withdrawn by applicant 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. (To be seen later) (NN 15/2021-CT)
- ❖ On withdrawal of application, the amount debited from ECrL shall be re-credited to ECrL
- ❖ At the time of application for refund on account of accumulated input tax credit, the electronic credit ledger shall be debited (Automatically happens)
- ❖ Once the application is made, the system generates, ARN i.e., Application Reference Number.
- ❖ Application for refund in case of export of **GOODS (not services)** is not required. Shipping bill filed would be deemed to be refund application [R. 96]
- ❖ Refund will not be granted if refund claimed is less than Rs. 1,000 each tax head separately not to be seen cumulatively. This limit would not apply in case where refund is on account of balance in electronic cash ledger

## Step 2: Acknowledgment of Refund Claim / Deficiency [R. 90]

- ❖ Once the application is submitted, and is complete **w.r.t. Documentation attached**, the proper officer would issue **acknowledgement in Form GST RFD 02 within 15 days of Application date (i.e., ARN)** *(Please note this is just acknowledgment and does not mean that entire refund has been scrutinised and approved thereof)*
- ❖ Refund order [under S. 54(7) read with S. 54(5)] shall be issued within 60 days from date of receipt of application complete in all respects.
- ❖ If the refund claim is not complete, the proper officer shall issue deficiency memo (DM), highlighting the **deficiency within 15 days of application in form GST RFD 03**. In case of deficient acknowledgment, in order to cure the deficiency, **FRESH APPLICATION has to be filed again**. It will have distinct ARN again [Time lost between Application Date till issue of DM shall be excluded from 2 years - R. 90(3)]
- ❖ On communication of Deficiencies, the electronic credit ledger shall be re-credited [R. 93(1)]. No requirement of PMT 03 to re-credit in ECrL.  
*(Note in case of exports with payment of tax, no separate debit is required)*
- ❖ No deficiency memo shall be issued again in respect of same deficiency, unless the same is not rectified or other substantial deficiency is found out.

## Step 3: Processing of Refund

- ❖ Once the refund claim is acknowledged by department, they start the processing and scrutinising the refund claim.
- ❖ As per S. 54(6) of CGST Act r/w Rule 91 of CGST Rules if refund is **on account of zero-rated supply of goods or services**, officer may sanction refund on provisional basis @ 90% of refund claimed within **7 DAYS FROM ACKNOWLEDGMENT IN FORM GST RFD - 04**.
- ❖ Provisional refund would only be granted if the applicant is not accused of prosecution under GST Act or under an existing law where the amount of tax evasion exceeds Rs. 2.5 crores [R. 91(1)]
- ❖ **Payment order** shall be issued in **GST RFD 05** for refunding provisional amount and shall be electronically credited to any of the bank accounts (to be revalidated if not paid in same FY)

### Dept. clarifications [Para 13 to Para 17 of Circular 125]

- ❖ If some refund inadmissible, Provisional refund @ 90% may be sanctioned of balance amt.
- ❖ If PO deems to issue full refund instead of provisional, he can do so
- ❖ Final refund < Provisionally granted, then show cause in RFD 08, shall be issued to recover the excess.
- ❖ If reply not furnished, PO shall add in applicant's electronic liability through issuance of FORM GST DRC-07
- ❖ If refund is of ITC, then it shall be re-credited to ECrL in GST PMT 03, only on receipt of undertaking from applicant, that he will not file appeal against the same
- ❖ Provisional refund shall **not be granted**, if amount is to be with-held u/s 54(10) or 54(11) of CGST Act even after reducing with-held amount. [Amount can be withheld by department when applicant was liable to pay which can be adjusted against refund payable by dept., or order giving rise to a refund is the subject matter of an appeal or where officer feels if refund given then it will affect adversely] **(In all cases refund can be withheld)**
- ❖ GST RFD 08 (SCN) and GST RFD - 06 (Refund order) shall be treated as issued u/s 73/74 only.

## Step 4: Sanction of Refund

- ❖ After scrutiny of refund application, if the officer deems fit that refund is eligible, then, he shall issue a **refund order** in Form **GST-RFD 06**, along with Refund order a **payment order in GST-RFD 05** shall be issued. Consolidated payment advice shall be made on basis of payment order, basis which refund is disbursed [R. 92(1)]
- ❖ Refund order is the amount payable to applicant in **respect of refund claimed, however**, payment order is what is actually payable to applicant, post reducing any amount payable by him and amount granted as provisional refund.
- ❖ If officer feels that some portion of refund is to be rejected, he has to issue **SCN** in form **GST RFD 08**, which is to be **replied** by applicant within 15 days in form **GST RFD 09**. Refund shall not be rejected before providing an opportunity of being heard.
- ❖ **Proportionate refund claim [R. 92(1A)]**: In cases other than zero rated supplies on payment of tax or deemed export, the refund shall be granted to the applicant **in the proportion in which it has been paid through E cash ledger**. If it was paid through ITC, it will be re-credited to ECrL through GST PMT 03.
- ❖ If amount of refund is to be withheld, PO shall issue pass order in Part A of GST RFD 07, at the time of release he shall issue the release order in Part B of GST RFD 07 and **then he has to pass refund sanction order (NN 15/2021 CT dated 18.05.2021)**.
- ❖ **If erroneous refund has been granted to the regd. person. He shall deposit the amount of erroneous refund along with applicable interest and penalty, wherever applicable, through FORM GST DRC-03 E-cash ledger.**
- ❖ **Proper officer shall re-credit an amount in electronic credit ledger by passing an order in FORM GST PMT-03A, preferably within a period of 30 days from**
  - ❖ **The date of receipt of request for re-credit of erroneous refund amount so deposited or**
  - ❖ **The date of payment of full amount of erroneous refund along with applicable interest, and penalty, wherever applicable,****whichever is later.**

## Step 5: Disbursement of Refund

- ❖ The disbursement of refund does not take place through GST Portal, it takes place through PFMS Portal, i.e., Public Financial Management System.
- ❖ The refund is paid to the bank account, details of which were furnished at the time of registration. Aadhar Authentication shall be done & all returns shall be filed before applying for refund.
- ❖ In cases where refund is on account of export of **GOODS on payment of tax**, the shipping bill filed shall be deemed to be application & the details of exports are transmitted to ICEGATE Portal [Indian Customs EDI (Electronic Data Transfer) Gateway] [R. 96] **(Aadhar Authentication mandatory) (Refer Last page for Rule 96 Amendments)**
- ❖ Export of service with payment of tax shall follow procedure as per Rule 89
- ❖ In case of exports to Bhutan, the refund is given to Bhutan government in order to increase imports of Indian products into Bhutan [R. 96(9)]
- ❖ As per Section 56 of CGST Act, **if refund is not paid to applicant within 60 days of application**, the applicant shall be eligible to get **interest @ 6% p.a.** from **61<sup>st</sup> Day from application of refund till date of grant of refund.**
- ❖ If refund is not granted within 60 days of application consequent to order passed in an appeal or further proceedings, then interest shall be payable by government @ 9% p.a. from **61<sup>st</sup> Day from application of refund till date of grant of refund.**

## Some Departmental Clarifications in respect of Refund & Section 57,58 (7/7)

### Clarification in respect of Advances | Refund Voucher | GSTR 3B aspects [Circular No. 137/07/2020-GST]

Sr. No.	Issue	Clarification
1	<p><b>CASE 1:</b> An advance is received by a supplier for a Service contract which subsequently got cancelled. Tax Invoice has been issued prior to supply; however, supply did not take place.</p> <p>OR;</p> <p><b>CASE 2:</b> Goods supplied by a supplier under cover of a tax invoice are returned by the recipient. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns ?</p>	<p>The supplier is required to issue a "credit note" in terms of section 34 of the CGST Act.</p> <p>He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim in such a case.</p> <p>However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST RFD-01.</p>
2	<p>An advance is received by a supplier for a Service contract which subsequently got cancelled.</p> <p>Receipt voucher has been issued at the time of receipt; however, supply did not take place, thus refund voucher was issued.</p>	<p>The taxpayer can apply for refund of GST paid on such advances by filing FORM GST RFD-01 under the category "Refund of excess payment of tax".</p>

### Consumer Welfare Fund [Section 57 & Section 58 r/w R. 97 & 98]

Consumer Welfare Fund was created to promote and protect the welfare of consumer, create consumer awareness and strengthen consumer movement in the country, particularly in rural areas. Amount of refund which is not payable to the applicant is credited to the Consumer Welfare Fund.

Credits to Fund	Debits to Fund
1. All amounts of duty CGST/ SGST/ IGST/ UTGST/ Cess and income from investment along with other monies specified in section 12C(2) of the erstwhile 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	1. All sums credited to the Consumer Welfare Fund shall be utilized by the Government for the welfare of the consumers in such manner as may be prescribed
2. An amount equivalent to 50% of the amount of IGST / compensation cess determined under section 54(5) of the CGST Act, read with section 20 of the IGST Act, shall be deposited in the Fund [1 <sup>st</sup> & 2 <sup>nd</sup> Proviso to rule 97(1)].	2. 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 consumers [Rule 97(4)]
3. Any amount, having been credited to the Consumer Welfare Fund, ordered or directed as payable to any claimant by orders of the proper officer, Appellate Authority or Appellate Tribunal or Court, shall be paid from the Fund [Rule 97(2)]	

### PROCEDURE & DOCUMENTATION IN RESPECT OF GOODS (SPECIFICALLY) SENT/TAKEN OUT OF INDIA FOR EXHIBITION OR ON CONSIGNMENT BASIS FOR EXPORT PROMOTION: (CIRCULAR NO. 108/27/2019-GST DATED 18TH JULY, 2019)

Aspect	Legal Provision	Analysis
<b>Supply</b>	<ul style="list-style-type: none"> <li>Section 7 of CGST Act r/w Schedule I to CGST Act, 2017 (Activities to be treated as supply without consideration)</li> <li>Zero Rated Supply (Sec 16 of IGST Act)</li> </ul>	<p>It is <u>not</u> a supply as in case of sale on approval basis transaction there is <u>no consideration</u>. Further it also <u>falls out of ambit of Schedule I</u>, accordingly it is <u>not a supply</u> under GST even if it is for without consideration.</p> <p>Since it is <u>not</u> a supply, the question of zero-rated "supply" does not arise. Accordingly, it is not a zero-rated supply (it does not mean it is exempt supply). Accordingly, the goods can be <u>sent</u> even <u>without LUT</u> &amp; question of refund does not arise at the time of sending goods.</p>
<b>Documentation (Tax Invoice &amp; Delivery Challan) to be kept by taxable person.</b>	<ul style="list-style-type: none"> <li>Section 31(7) of CGST Act (Invoicing in case of sale or approval basis)</li> <li>Rule 55 of CGST Rule (Delivery Challan) &amp; Rule 46 of CGST Rules (Tax Invoice)</li> </ul>	<p>Goods sent on approval shall be accompanied with <u>delivery challan</u> u/r 55 of CGST Rules, 2017.</p> <p>As per section 31(7) of CGST Act, 2017; if the goods are not returned within 6 months from date of removal, it shall be deemed to be supplied on expiry of 6 months. In such a case it would be treated as supply &amp; tax invoice (R. 46) shall be raised on expiry of 6 months.</p>
<b>Accounts &amp; Records</b>	Circular No. 108/27/2019-GST dated 18 <sup>th</sup> July, 2019	The registered person dealing in specified goods shall maintain a record such as Description, removal date, quantity, value, shipping bill No., details of goods not bought back etc.
<b>Refund of Tax for goods sent out of India.</b>	Circular No. 108/27/2019-GST dated 18 <sup>th</sup> July, 2019	<p>As the same is not a zero-rated supply, question of refund of tax does not arise. However, when it is treated as supply it would be a Zero – rated supply &amp; refund of tax is permissible.</p> <p>It will be treated as supply: -</p> <ul style="list-style-type: none"> <li>(i) On the date of expiry of six months from the date of removal, if the specified goods are neither sold nor brought back within the said period; or</li> <li>(ii) On the date of sale, in respect of such quantity of specified goods which have been sold abroad within the specified period of six months.</li> </ul> <p><b>Even if goods are treated as supply in case (i) &amp; (ii) as above, the refund u/s 89(4) can only be claimed in respect of (ii) only i.e., goods actually sold abroad.</b></p> <p>Further, it is important to note that question of "Export on payment of GST" does not arise in this case as, when goods were sent, they were not actually exported (unless accepted / time-limit expired).</p>
<b>GREY AREAS IN INDUSTRY</b>		<p>Department has failed to clarify that, if goods are brought back after 6 months in India on payment of tax, what would be the scenario when they would be sold again? Whether they will be liable to GST again or would not be taxed at the time of re-supply but tax would be collected from recipient which was paid by supplier under deeming fiction of section 31(7).</p> <p><b>(Ignore for exam purpose - In my opinion, no tax shall be levied again)</b></p>

**"If you genuinely want something, don't wait for it-teach yourself to be impatient."**

**Amendments in relation to rule 96 (NN 14/2022 – CT)**

**Rule 96(b): Filing of 3B must for refund claim:**

~~Old R. 96 (b): the applicant has furnished a valid return in FORM GSTR-3 or FORM GSTR-3B, as the case may be~~

**Newly Inserted R. 96(b) (Summarised):**

*The applicant has furnished a valid return in FORM GSTR-3B. However, if there is any mismatch between Shipping Bill and FORM GSTR-1, such application for refund shall be deemed to be filed on such date when such mismatch in respect of the said shipping bill is rectified by the exporter.*

**With-holding of refund claim [R. 96(4) insertion of clause (c)]:**

*The claim for refund shall be withheld when, -*

*a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of sub-section (10) or sub-section (11) of section 54; or*

*the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962 or,*

*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.*

**Omission of 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~~

**Insertion of Rule 96(5A) & (5B)**

*When refund is withheld under rule 96(4)(a) & (c) or, when refund is withheld under rule 96(4)(b) and customs officer passes order that goods have been exported in violation of law then, such claim shall be transmitted to the proper officer of Central tax, State tax or Union territory tax, as in system generated FORM GST RFD-01 and the intimation of such transmission shall also be sent to the exporter electronically through the common portal.*

*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.*

*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 [Rule 96(5C)]*