

claiming refund of Rs. 1,44,000; recipient would not be allowed to take refund. Thus, recipient (i.e., exporter) shall not add the turnover (sales) effected from said purchases in its numerator and denominator.

**Question 22: - [Refund of Unutilised ITC on account of inverted duty structure, exports, deemed exports]**

Kailash Global (P) Ltd. supplies various goods in domestic and international markets. It is engaged in both manufacturing and trading of goods. The company is registered under GST in the State of Karnataka. The company exports goods without payment of tax under letter of undertaking in accordance with the provisions of Sections 16(3)(a) of the IGST Act, 2017. The company has made the following supplies during a tax period:

S. No	Particulars	Amount (Rs.)
1)	Export of product 'A' to UK for Rs.10,000. Assessable Value under customs in Indian rupees. [Export duty is levied on product 'A' at the time of exports]	7,00,000
2)	Domestic supplies of taxable product 'B'* during the period [excluding tax @ 5%] [Inputs used in manufacturing of such goods are taxable @ 18%] *not notified as a product, in respect of which refund of unutilized ITC shall not be allowed under Section 54(3)(ii) of the CGST Act, 2017.	10,00,000
3)	Supply of goods to Export Oriented Unit [excluding tax @ 18%] [ITC has been claimed by the recipient]	5,00,000
4)	Export of exempt supplies of goods	6,00,000

The ITC available for the above tax period is as follow:

S. No	Particulars	Amount (Rs.)
1)	On inputs (including Rs.50,000 on export of exempt supplies)	3,50,000
2)	On capital goods	1,20,000
3)	On input services (including Rs.18,000 on outdoor catering)	2,00,000

Determine the maximum amount to refund admissible to Kailash Global (P) Ltd. for the given tax period.  
(CA Final, November, 2019)

Answer: -

**Computation of Maximum Amount of Refund Admissible**

Particulars	Amount (Rs.)
Exports of product 'A' to UK [Note 1]	Nil
Domestic supplies of taxable product 'B' during the period [Note 2]	75,000
Supply of goods to Export Oriented Unit [Note 3]	Nil
Export of exempt supplies [Note 4]	1,14,000
<b>Maximum Refund Admissible</b>	<b>1,89,000</b>

Notes: -

- 1) Export of goods is a zero-rated supply in terms of Section 16 of the IGST Act, 2017. Further, Kailash Global (P) Ltd. exports goods without payment of tax under letter of undertaking in accordance with the provisions of Section 16 of the IGST Act, 2017 read with Rule 96A. Therefore, as per Section 54(3) of the CGST Act, 2017, a registered person may claim refund, of any unutilized ITC in the case of Zero-rated supply at the end of any tax period. However, Section 54(3) also provides that refund of unutilized ITC is not allowed if the goods exported out of India are subjected to export duty. Accordingly, no refund would be allowed to Kailash Global (P) Ltd on account of export of goods which are leviable to exports duty.

- 2) Refund of unutilized ITC is allowed in case of inverted duty structure, i.e. where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies) except supplies of goods or services or both as may be notified by the Government on the recommendations of the GST Council [Section 54(3) of the CGST Act, 2017].

As per rule 89(5) of CGST Rules, 2017;

$$\text{Maximum Amount of Refund} = \frac{\text{Turnover of Inverted rate of supply of goods \& services}}{\text{Adjusted Total Turnover}} \times \text{Net ITC} \quad (-) \quad \text{Tax payable on such inverted rated supply of goods and services x Net ITC / ITC availed on inputs and input services}$$

Particulars	Denoted by	Amount
Turnover of Inverted Rated Supply of Goods & Services	A	10,00,000
Adjusted Total Turnover = Turnover in a State excluding turnover of services + Turnover of zero-rated supply of services determined in terms of specified manner + non-zero-rated supply of services – [Exempt supplies other than zero-rated supplies + Turnover of supplies in respect of which refund is claimed under 89(4A) and 89(4B)] = Rs.7,00,000 + Rs.10,00,000 + Rs.5,00,000 + Rs.6,00,000  <b>(Here Rule 89(4A) turnover is added because refund is claimed by recipient, not by supplier. Had it been claimed by supplier, we would have excluded Rs. 5,00,000)</b>  <i>[Refer Note (ii) on exclusion from 89(4A) turnover, mentioned in previous questions]</i>	B	28,00,000
Net ITC = Input tax credit availed on inputs during the relevant period other than the ITC availed for which refund is claimed under Rule 89(4A) or Rule 89(4B) or both	C	3,50,000
Tax payable on such inverted rated supply of goods and services x Net ITC / ITC availed on inputs and input services = Rs.10,00,000 * 5% x 350000/532000	D	32,895
<b>Maximum Refund = A/B x C (-) D</b>		<b>92,105</b>

3. As per Section 2(39) of the CGST Act, 2017, deemed exports means such supplies of goods as may be notified under Section 147 of the CGST Act, 2017. Supplies to EOU is notified as deemed export under Section 147 vide Notification No. 48/2017-CT. In respect of supplies regarded as deemed exports, the application of refund can be filed by the supplier of deemed export supplies only in cases where the recipient does not avail of ITC on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund [Proviso 3 to Rule 89 of the CGST Rules, 2017]. Therefore, since in the given case, the recipient is claiming ITC, Kailash Global (P) Ltd. (supplier of deemed exports) cannot claim refund of ITC.
4. Section 16(2) of the IGST Act, 2017 stipulates that subject to the provisions of Section 17(5) of the CGST Act, ITC may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply. Section 54(3) of the CGST Act, 2017 allows refund of ITC in the Case of Zero-rated supply made without payment of tax.

As per rule 89(4) of CGST Rules, refund amount in case of exports under LUT is as follows: -

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

#### Computation of Maximum Refund of ITC in respect of Zero-Rated Supplies as per Rule 89(4)

Particulars	Denoted by	Amount (Rs.)
Net ITC = <i>Input tax credit availed on <b>inputs and input services (NOT CG)</b> excluding ITC availed for which refund is claimed under Rule 89(4A) and 89(4B) = Rs.5,32,000 (ITC on outdoor catering disallowed under Section 17(5) of CGST Act, 2017).</i> <b>Imp Note - ITC CG is not allowed as refund, however, credit can be availed [subject to section 17(5)]</b>	A	5,32,000
Turnover of Zero-Rated Supply of Goods = <ul style="list-style-type: none"> <li>➤ the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or,</li> <li>➤ 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.</li> </ul> whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both. <i>Rs.6,00,000</i>	B	6,00,000
Turnover of Zero-Rated Supply of Services = <i>Payments received during the relevant period + Services where supply has been completed for which payment had been received in advance in any prior period - Advances received for which the supply of services has not been completed during the relevant period = Rs. Nil</i>	C	0
Adjusted Total Turnover = <i>Turnover in a State excluding turnover of services + Turnover of zero-rated supply of services determined as above + Non-zero-rated supply of services – [Exempt supplies other than zero-rated supplies + Turnover of supplies in respect of which refund is claimed under 89(4A) and 89(4B)] = Rs.7,00,000 + Rs.10,00,000 + Rs.5,00,000 + Rs.6,00,000</i>	D	28,00,000
<b>Maximum Refund = A X (B+C)/D</b>		<b>1,14,000</b>

#### Tutorial note: -

- Section 54(3) provides that refund of unutilized ITC is not allowed if the goods exported out of India are subjected to export duty.
- For deemed exports, either supplier or recipient can file for refund and not both. The application of refund can be filed by the supplier of deemed export supplies only in cases where the recipient does not avail of ITC on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund (3<sup>rd</sup> Proviso to Rule 89(1)).
- Refund of ITC for zero rated supplies (R. 89(4)) and for inverted duty structure (R. 89(5)) will be claimed as per the formulas.
- Important difference, in Rule 89(5) the rate of tax on output supplies is lower than that of inputs but it is not zero-rated, so tax payable on such output supplies will be reduced from the refund amount. No such reduction for refund under Rule 89(4) i.e., refund on account of exports.

- 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.

**Question 23: - [Inverted Duty Structure Refund Claim]**

Super Engineering Works, a registered supplier in Haryana, is engaged in supply of taxable goods within the State. Given below are the details of the turnover and applicable GST rates of the final products manufactured by Super Engineering Works as also the input tax credit (ITC) availed on inputs used in manufacture of each of the final products and GST rates applicable on the same, during a tax period: -

Product	Turnover (Excl. GST)	Output GST Rate	ITC Availed	Input GST Rates
A	5,00,000	5%	54,000	18%
B	3,50,000	5%	54,000	18%
C	1,00,000	18%	10,000	18%

Determine the maximum amount of refund of the unutilized input tax credit that Super Engineering Works is eligible to claim under section 54(3)(ii) of the CGST Act, 2017 provided that Product B is notified as a product, in respect of which no refund of unutilized input tax credit shall be allowed under said section.

Answer: -

Refund of unutilized ITC is allowed in case of inverted duty structure, i.e. where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies) except supplies of goods or services or both as may be notified by the Government on the recommendations of the GST Council [Section 54(3) of the CGST Act, 2017]. As per rule 89(5) of CGST Rules, 2017;

$$\text{Maximum Amount of Refund} = \frac{\text{Turnover of Inverted rate of supply of goods \& services}}{\text{Adjusted Total Turnover}} \times \text{Net ITC (-)} \times \text{Tax payable on such inverted rated supply of goods and services} \times \frac{\text{Net ITC / ITC availed on inputs and input services}}{\text{Net ITC / ITC availed on inputs and input services}}$$

**Computation of Refund on Account of Inverted Duty Structure**

Particulars	Denoted by	Amount
Turnover of Inverted Rated Supply of Goods & Services (Turnover of Product A, Turnover of product B is not considered because it is a notified product wherein refund would not be allowed)	A	5,00,000
Adjusted Total Turnover = Turnover in a State excluding turnover of services + Turnover of zero-rated supply of services determined in terms of specified manner + non-zero-rated supply of services – [Exempt supplies other than zero-rated supplies + Turnover of supplies in respect of which refund is claimed under 89(4A) and 89(4B)] (Total of Product A, B, C)	B	9,50,000
Net ITC = Input tax credit availed on inputs during the relevant period other than the ITC availed for which refund is claimed under Rule 89(4A) or Rule 89(4B) or both (Total ITC on product A, B, C) <b>Imp Note: - Even if refund is allowed in respect of inverted products, while calculating net ITC whole ITC shall be taken irrespective of belonging to inverted rate or not, or whether the refund is eligible on the said product or not.</b>	C	1,18,000

Particulars	Denoted by	Amount
As in this case, ➤ ITC in respect of product C is taken even if the same is not inverted rated product, and; ➤ ITC in respect of product B is also taken even if the same is ineligible for refund claim. (This has been clarified by Circular 125/44/2019)		
Tax payable on such inverted rated supply of goods and services x Net ITC / ITC availed on inputs and input services = 5,00,000 x 5% x 1,18,000/1,18,000 (Product B is notified as a product, in respect of which no refund of unutilized ITC shall be allowed under Section 54(3)(ii) of the CGST Act, 2017. Therefore, only Product A is eligible for refund under Section 54(3)(ii).) [Net ITC is same as ITC availed on inputs and input services]	D	25,000
<b>Maximum Refund = A/B x C (-) D</b>		<b>37,105</b>

**Tutorial Note: - The only different point in this question is ITC availed relating to product B. Net ITC considered in the solution is the Total ITC on all products A, B and C (although Product B is notified as product for which no refund of unutilized input tax credit shall be allowed).**

**Question 24:**

Jai and Co, a registered supplier under GST, is engaged in weaving yarn into fabrics and has provided the following information:

Nature of various intra-State supplies during April 2021	Value of supply (excluding GST) (Rs.)
Outward supply of fabrics (Tax rate of CGST and SGST is 2.5% each)	30,00,000
Inward supply of rayon yarn (Tax rate of CGST and SGST is 6% each)	24,00,000
Inward supply of services for processing the yarn (Tax rate of CGST and SGST is 2.5% each)	4,00,000
Inward supply of machineries for weaving the processed yarn into fabrics (Tax rate of CGST and SGST is 9% each)	45,00,000
The concern has not provided any supply other than the outward supply referred above.	
ITC in respect of all types of inward supplies as given above was claimed in the relevant GSTR 3B as well reflected in GSTR 2A.	
Other applicable conditions for claiming the refund are duly complied with.	

You are required to compute the 'maximum refund amount' eligible under rule 89(5) of CGST Rules, 2017 for inverted duty structure. (CA Final, November, 2021)

Note - No refund has been claimed under rule 89(3) or rule 89(4) of the CGST Rules, 2017

**Answer:**

Refund of unutilized ITC is allowed in case of inverted duty structure, i.e. where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies) except supplies of goods or services or both as may be notified by the Government on the recommendations of the GST Council [Section 54(3) of the CGST Act, 2017]. As per rule 89(5) of CGST Rules, 2017;

$$\text{Maximum Amount of Refund} = \frac{\text{Turnover of Inverted rate of supply of goods \& services}}{\text{Adjusted Total Turnover}} \times \text{Net ITC (-)} = \text{Tax payable on such inverted rated supply of goods and services x Net ITC / ITC availed on inputs and input services}$$

Net ITC means ITC availed in respect of “inputs” not input services or capital goods.

**Computation of refund:**

$$= \text{Rs. } [(24,00,000 \times 6\%) \times 30,00,000 / 30,00,000] - [30,00,000 \times 2.5\% \times 144000 / 164000] \text{ (each for CGST and SGST)}$$

$$= \text{Rs. } 78,145$$

Thus, maximum refund amount is Rs. 78,145 each for CGST and SGST.

**Question 25: - [Goods Sent to Exhibition]**

An international trade exhibition is going to be held in United States of America in January. Aayaat Niryat Export House (ANEH) has participated in it. It intends to send 100 units of taxable goods manufactured by it to USA for display in the said exhibition.

ANEH is of the view that the activity of sending the goods out of India for exhibition is a zero-rated supply. However, its tax advisor does not concur with its view. Examine whether the view of ANEH is correct.

Assuming that ANEH could not sell any goods at the exhibition and brings back entire 100 units to India (i) in February, (ii) in August,

Discuss the requirement to issue invoice, if any, in each of the above independent cases.

Would your answer be different if ANEH sells an aggregate of 65 units of the taxable goods in USA exhibition on different dates in January and remaining 35 units are brought back on 31st January. The tax advisor of ANEH advises ANEH that the export of 65 units qualify as zero-rated supply and it should apply for refund of the unutilized ITC in respect of the same. Examine the technical veracity of the tax advisor’s advice (RTP, May, 2020)

**Answer: -**

**(i) Taking goods outside India for exhibition is a “supply”:** - No, the view of ANEH that the activity of sending the goods out of India for exhibition is a zero-rated supply, is not correct. As per section 7 of the CGST Act, for any activity or transaction to be considered a supply, it must satisfy twin tests namely-

- it should be for a consideration by a person; and
- it should be in the course or furtherance of business.

The exceptions to the above are the activities outlined in Schedule I of the CGST Act which are treated as supply even if made without consideration. Further, section 2(21) of the IGST Act defines “supply”, wherein it is clearly stated that it shall have the same meaning as assigned to it in section 7 of the CGST Act.

**(ii) Since it is not a “supply” it cannot be a Zero-rated supply:** -Section 16 of the IGST Act defines “zero rated supply” as any of the following supplies of goods or services or both, namely: –

- export of goods or services or both; or
- supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

Thus, only such “supplies” which are either “export” or are “supply to SEZ unit/ developer” would qualify as zero-rated supply.

In view of the above provisions, Circular No. 108/27/2019 GST dated 18.07.2019 clarified that the activity of sending/ taking the goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfies the tests laid down in Schedule I of the CGST Act, do not constitute supply as the said activity does not fall within the scope of section 7 of the CGST Act as there is no consideration at that point in time. Since