

Refunds

Introduction

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

The provisions pertaining to refund contained in the GST law aim to streamline and standardise the refund procedures under GST regime. Thus, under the GST regime, there will be a standardised form for making any claim for refunds. The claim and sanctioning procedure will be completely online and time bound, which is a marked departure from the existing time consuming and cumbersome procedure.

Situations Leading to Refund Claims

The relevant date provision embodied in Section 54 of the CGST Act, 2017, provision contained in Section 77 of the CGST Act, 2017 and the requirement of submission of relevant documents as listed in Rule 1(2) of Refund Rules is an indicator of the various situations that may necessitate a refund claim. A claim for refund may arise on account of:

1. Export of goods or services
2. Supplies to SEZs units and developers
3. Deemed exports
4. Refund of taxes on purchase made by UN or embassies etc.
5. Refund arising on account of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court
6. Refund of accumulated Input Tax Credit on account of inverted duty structure
7. Finalisation of provisional assessment
8. Refund of pre-deposit
9. Excess payment due to mistake
10. Refunds to International tourists of GST paid on goods in India and carried abroad at the time of their departure from India
11. Refund on account of issuance of refund vouchers for taxes paid on advances against which, goods or services have not been supplied
12. Refund of CGST & SGST paid by treating the supply as intra-State supply which is subsequently held as inter-State supply and vice versa

Thus, practically every situation is covered. The GST law requires that every claim for refund is to be filed within 2 years from the relevant date.

Credit Notes

Further, Section 34 of the CGST Act, 2017 provides for issuance of credit notes for post supply discounts or if goods are returned back within a stipulated time. When such credit notes are issued, obviously it would call for reduction in output liability of the supplier. Hence, the taxes paid initially on the supply would be higher than what is actually payable. In such a scenario, the excess tax paid by the supplier needs to be refunded. However, instead of refunding it outright, it is sought to be adjusted after verifying the corresponding reduction in the input tax credit availed by the recipient. Section 43 of the CGST Act, 2017 provides for procedure for reduction in output liability on account of issuance of such credit notes. This is another form of refund by

adjustments in the output tax liability. Such refund is not governed under the general refund provisions contained in Section 54 of the CGST Act, 2017.

Treatment for Zero Rated Supplies

One of the major categories under which, claim for refund may arise would be, on account of exports. All exports (whether of goods or services) as well as supplies to SEZs have been categorised as Zero Rated Supplies in the IGST Act. "Zero rated supply" under Section 16 of the IGST Act, 2017 means any of the following supplies of goods or services or both, namely:

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

On account of zero rating of supplies, the supplier will be entitled to claim input tax credit in respect of goods or services or both used for such supplies even though they might be non-taxable or even exempt supplies. Every person making claim of refund on account of zero rated supplies has two options. Either he can export under Bond/LUT and claim refund of accumulated Input Tax Credit or he may export on payment of integrated tax and claim refund of thereof as per the provisions of Section 54 of CGST Act, 2017. Thus, the GST law allows the flexibility to the exporter (which, will include the supplier making supplies to SEZ) to claim refund upfront as integrated tax (by making supplies on payment of tax using ITC) or export without payment of tax by executing a Bond/LUT and claim refund of related ITC of taxes paid on inputs and input services used in making zero rated supplies.

Grant of Provisional Refund in Case of Zero Rated Supplies

GST law also provides for grant of provisional refund of 90% of the total refund claim, in case the claim relates for refund arising on account of zero rated supplies. The provisional refund would be paid within 7 days after giving the acknowledgement. The acknowledgement of refund application is normally issued within a period of 14 days but in case of refund of integrated tax paid on zero rated supplies, the acknowledgement would be issued within a period of three days. The provisional refund would not be granted to such supplier who was, during any period of five years immediately preceding the refund period, was prosecuted.

Payment of Wrong Tax

Under GST it might happen that the taxable person may pay integrated tax instead of central tax plus state tax and vice versa because of incorrect application of the place of supply provisions. In such cases, while making the appropriate payment of tax, interest will not be charged and the refund claim of the wrong tax paid earlier will be entertained without subjecting it to the provision of unjust enrichment.

Claim by a Person who has Borne the Incidence of Tax

Any tax collected by the taxable person more than the tax due on such supplies must be credited to the Government account. The law makes explicit provision for the person who has borne the incidence of tax to file refund claim in accordance with the provisions of Section 54 of the CGST Act, 2017.

Refunds to Casual/Non-Resident Taxable Persons Casual/Non-resident taxable person has to pay tax in advance at the time of registration. Refund may become due to such persons at the end of the registration period because the tax paid in advance may be more than the actual tax liability on the supplies made by them during the period of validity of registration period. The law envisages refund to such categories of taxable persons also. But the amount of excess advance tax shall not be refunded unless such person has filed all the returns due during the time their registration was effective. It is only after such compliance that refund will be granted.

Refund to UN Bodies and Other Notified Agencies

Supplies made to UN bodies and embassies may be exempted from payment of GST as per international obligations. However, this exemption is being operationalized by way of a refund mechanism. So, a taxable person making supplies to such bodies would charge the tax due and remit the same to government account. However, the UN bodies and other entities notified under Section 55 of the CGST Act, 2017 can claim refund of the taxes paid by them on their purchases. The claim has to be made before the expiry of six months from the last day of the quarter in which such supply was received.

Refund to International Tourist

An enabling mechanism has been introduced in Section 15 of the IGST Act, 2017 whereby an international tourist procuring goods in India, may while leaving the country seek refund of integrated tax paid by them. The term, "tourist" has been defined and refers to any person who is not normally a resident of India and who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes.

Unjust Enrichment

Talking about unjust enrichment, a presumption is always drawn that the businessman will shift the incidence of tax to the final consumer. This is because GST is an indirect tax whose incidence is to be borne by the consumer. It is for this reason that every claim of refund (barring specified exceptions) needs to pass the test of unjust enrichment. And every such claim if sanctioned is first transferred to the Consumer Welfare Fund. The GST law makes this test inapplicable in case of refund of accumulated ITC, refund on account of exports, refund of payment of wrong tax (integrated tax instead of central tax plus state tax and vice versa), refund of tax paid on a supply, which is not provided or when refund voucher is issued or if the applicant shows that he has not passed on the incidence of tax to any other person. In all other cases, the test of unjust enrichment needs to be satisfied for the claim to be paid to the applicant. For crossing the bar of unjust enrichment, if the refund claim is less than Rs.2 Lakhs, then a self-declaration of the applicant to the effect that the incidence of tax has not been passed to any other person will suffice to process the refund claim. For refund claims exceeding Rs. 2 Lakhs, a certificate from a Chartered Accountant/Cost Accountant will have to be given.

Standardisation of Procedure

The GST laws makes standardised provisions for making a refund claim. Every claim has to be filed online in a standardised form which will be acknowledged (if complete in all aspects) in 14 days. The claim for refund of amount lying in the credit balance of the cash ledger can be made in the monthly returns also. The Proper Officer has to convey deficiencies if any in the refund claim within 14 days and in such cases the claim will be sent back to the applicant along with the notified deficiencies, and the applicant can file the refund claim again after making goods the deficiencies. No deficiency memos can be raised after the mandatory 14 day period. The claim, if in order, has to be sanctioned within a period of 60 days from the date of receipt of the claim. If this mandatory period is exceeded, interest will become payable along with refund from the expiry of 60 days till the date of payment of refund (rate of interest has been recommended as 6% and 9% under the provisions of Section 56 of the CGST Act, 2017 by the GST Council in its meeting held on 18th and 19th May, 2017). However, if the refund claim is on account of pre-deposit made before any appellate authority, the interest becomes payable from the date of making such payment.

Documentation

The applicant needs to file elaborate documents along with the refund claim. Standardised and easy to understand documents have been prescribed. Thus, for every claim, the main document prescribed is a statement of relevant invoices (NOT THE INVOICES ITSELF) pertaining to the claim. In case refund is on account of export of services, apart from the statement of invoices, the relevant bank realisation certificates evidencing receipt of payment in foreign currency is also required to be submitted. If it is a claim made by the supplier to the SEZ unit, an endorsement from the Proper Officer evidencing receipt of such goods/services in the SEZ also needs to be submitted. Further, a declaration is also required from the SEZ unit to the effect that they have not availed ITC of the taxpaid by the supplier. If the claim is for refund of accumulated ITC, only a

statement containing invoice details as prescribed in the Refund rules need to be given. In case of claim of refund on account of any order or judgment of appellate authority or court, the reference number of the order giving rise to refund should also be given. For crossing the bar of unjust enrichment, if the refund claim is less than Rs.2 Lakhs, then a self-declaration by the applicant to the effect that the incidence of tax has not been passed to any other person will suffice to process the refund claim. For refund claims exceeding Rs. 2 Lakhs, a certificate from a Chartered Accountant/Cost Accountant will have to be given. It is to be noted that such document need not be given if it is a claim arising on account of zero rated supplies or claim of accumulated ITC or payment of wrong tax (integrated tax instead of central tax and state tax and vice versa) or a claim where supply is not done or a refund voucher has been issued.

Compliance with Natural Justice

In case the claim is sought to be rejected by the Proper Officer, a notice has to be given online to the applicant stating the ground on which the refund is sought to be rejected. The applicant needs to respond online within 15 days from the receipt of such notice. Thus no claim can be rejected without putting the applicant to notice.

Payment to be Credited Online

The refund claim, wherever due, will be directly credited to the bank account of the applicant. The applicant need not come to the authorities to collect the cheques or for any other issues relating to the refund claim.

Power with the Commissioner to Withhold Refund in Certain Cases GST law provides that where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine. But it has been adequately safeguarded by provision for payment of interest @ 9% if, as a result of appeal, or further proceedings, the applicant becomes eligible for refund.

Conclusion

In sum, the law envisages a simplified, time bound and technology driven refund procedure with minimal human interface between the taxpayer and tax authorities.