

# GST refund Practical Issues

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# Instance of refunds under GST law

Select the Refund type:



• Indicates Mandatory Fields

<input type="radio"/>	Refund of Excess Balance in Electronic Cash Ledger
<input type="radio"/>	Refund of ITC on Export of Goods & Services without Payment of Tax
<input type="radio"/>	On account of supplies made to SEZ unit/ SEZ developer (without payment of tax)
<input type="radio"/>	Refund on account of ITC accumulated due to Inverted Tax Structure
<input type="radio"/>	On account of Refund by Recipient of deemed export
<input type="radio"/>	Refund on account of Supplies to SEZ unit/ SEZ Developer (with payment of tax)
<input type="radio"/>	Export of services with payment of tax
<input type="radio"/>	Tax paid on an intra-State supply which is subsequently held to be inter-State supply and vice versa
<input type="radio"/>	On account of Refund by Supplier of deemed export
<input type="radio"/>	Any other (specify)
<input type="radio"/>	Excess payment of tax
<input type="radio"/>	On Account of Assessment/Provisional Assessment/Appeal/Any other order

CREATE REFUND APPLICATION

# Legal Provisions of GST refund

- Chapter XI of CGST Act – S.54 to S.58
- Chapter X of CGST Rules – R.89 to R.97A
- Refund includes
  - refund of tax paid on zero-rated supplies of goods or services or both or
  - Refund on inputs or input services used in making such zero-rated supplies, or
  - refund of tax on the supply of goods regarded as deemed exports, or
  - refund of unutilized input tax credit as provided under sub-section (3).

# Legal Provisions of GST refund

- What is the “Relevant date”:

Sr. No.	Type of refund	Relevant date
1.	Export of goods	Date of export
2.	Deemed exports	Date of filing of return
3.	Export of service with or without payment of IGST	Date of issuance of invoice; or Date of receipt of payment Whichever is later
4.	Judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court	Date of communication of such judgment, decree, order or direction
5.	Inverted duty structure	Date of filing of return
6.	Any other case	Date of payment of tax

# Formulae of GST refund

$$\text{Refund of Export of goods without payment of IGST} = \frac{\text{Turnover of zero-rated supply of goods}}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

$$\text{Refund of Export of service without payment of IGST} = \frac{\text{Turnover of zero-rated supply of Service}}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

$$\text{Refund under inverted Duty Structure [IDS]} = \frac{\text{Turnover of inverted rated supply of goods and services} \times \text{Net ITC} - \text{Tax payable on such inverted rated supply of goods and services}}{\text{Adjusted Total Turnover}}$$

# How to calculate adjusted total turnover?

	Particulars
	Turnover in state as per GSTR 1
<b>Less:</b>	Export of service as per GSTR 1
<b>Less:</b>	Exempt supplies other than zero-rated supplies
<b>Less:</b>	Supplies of deemed export and supplies under merchant exporter scheme
<b>Add:</b>	Turnover of export of service to be determined by “semi-receipt basis” structure
<b>Less:</b>	Adjustment in turnover due to valuation as per circular 147

# How to calculate turnover of export of goods?

- Turnover of export of goods is to be reported on basis of invoice issued in particular tax period in GSTR 1.
- Adjustment on account of FOB vs CIF *[Is this as per the law??? Will discuss in the later part]*
- Adjustment on account of valuation of export up to 1.5 times of the same or similar goods supplied domestically by the same or similarly place supplier



# How to calculate turnover of export of service?

- Turnover of service is to be reported on basis of invoice issued in particular tax period in GSTR 1.
- However, for the purpose of refund, a separate formulae is given for calculation of turnover of export of service.

<b>Payments received during the relevant period</b>	
Add:	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
Less:	advances received for which the supply of services has not been completed during the relevant period

# Documents required for refund application

## Requirements placed by circular 125

- Declarations
- GSTR 2A
- Purchase register in Annexure B format
- BRC/FIRC copy in case of export of service
- Shipping Bill, only in case of export through non-EDI ports
- SEZ endorsed invoices

# Documents required for refund application

**Requirements placed by circular 125, but is in contravention of the law (or of even logic!!)**

- In case of inverted duty structure - **Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise**
- What is 89(2)(l)

(l) a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed two lakh rupees:

Provided that a declaration is not required to be furnished in respect of the cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54;

# Documents required for refund application

## ➤ What is S.54(8)?

(8) Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

- (a) [refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports;]<sup>85</sup>
- (b) refund of unutilised input tax credit under sub-section (3);
- (c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
- (d) refund of tax in pursuance of section 77;
- (e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or
- (f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

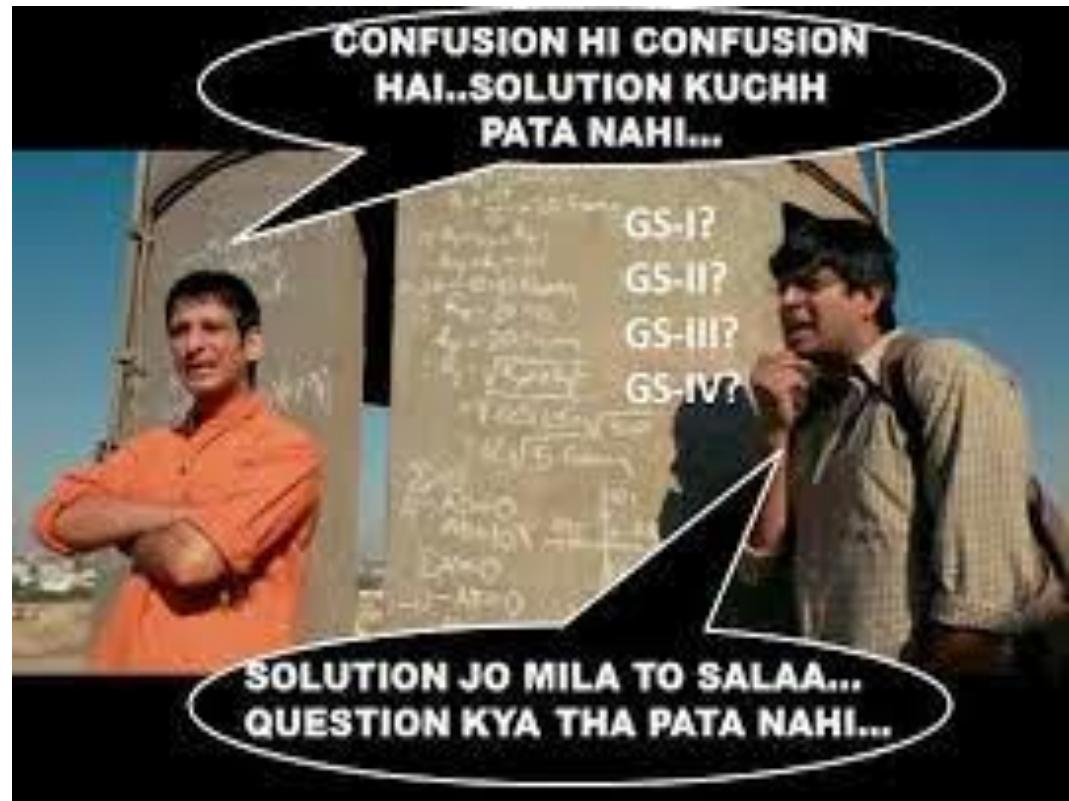
# Documents required for refund application

- In case of export of service without payment of IGST

2	Refund of tax paid on export of services made with payment of tax	Declaration under second and third proviso to section 54(3)	BRCA/FIRC /any other document indicating the receipt of sale proceeds of services
		Undertaking in relation to sections 16(2)(c) and section 42(2)	Copy of GSTR-2A of the relevant period
		Statement 2 under rule 89(2)(c)	Statement of invoices (Annexure-B)
			Self-certified copies of invoices entered in Annexure-A whose details are not found in GSTR-2A of the relevant period
			Self-declaration regarding non-prosecution under sub-rule (1) of rule 91 of the CGST Rules for availing provisional refund

# Documents required for refund application

- In case of export of service WP, the refund is being claimed on “**outward liability discharged**” at appropriate rate against the value of supply;
- The claim is **not** arising out of “**Unutilised ITC**”;
- Why reconciliation with GSTR 2A is required?



# Documents required for refund application

Requirement not placed in circular 125, but

advisable to be submitted

- Working of valuation of exports up to 1.5 times;
- Reconciliation of turnover as per GSTR 1 vs 3B;
- Reconciliation of ITC claimed in GSTR 3B vs ITC considered in GST refund application;
- Working of refund derived after necessary adjustments as above



# Important Amendments

## ➤ **What is rule 86(4) for refund of excess tax paid?**

Ans: Where a refund is claimed on account of “excess tax paid or tax wrongly paid” for which the debit has been made to “Credit Ledger”, the refund should also be granted in “Credit Ledger” and not “cash ledger”

- This has been inserted in order to mitigate the mischief made by some registered person by deliberately paying excess tax through credit ledger and then claiming refund thereof in the bank account.

# Important Amendments

- **What is Rule 96B?**
- In case of export of goods WP / WOP, where the proceeds has not been realized in FCC within the time period prescribed under FEMA / RBI, then the refund disbursed is to be recovered with interest u/s 50;
- Recovery to be made in case the registered person fails to pay it back within 30 days from the date of expiry of time limit for realization;
- What if the payment is not realized at the time of filing refund application, but the time limit has not been expired yet?

# Important Amendments

- **What is rule 96(10)? How to deal in case wrongly claimed refund under “EXPWP”?**
- In case a registered person has availed benefit of procurement without GST against
  - Advance authorization license;
  - Purchase from EOU;
  - Purchase of gold from banks or notified PSUs
- Then such person cannot make export “with payment of IGST”
- This rule 96(10) itself is amended 4 times that too, w.r.e.f. 23<sup>rd</sup> October, 2017 every time;
- Even govt was not clear every time as to what should be the provision logically;

# Important Amendments

- **Final position as on today (obviously w.r.e.f 23.10.2017) is as under:**
  - Person should not have availed benefit of duty exemption as per previous slide from the respective suppliers (i.e. AA, EOU, banks etc);
  - However, availment of EPCG exemption is allowed;
  - If IGST is paid at the time of procurement and only BCD exemption is availed, then it will not fall within the purview of 96(10);

# Important Amendments

- Options available with exporter who have already made export WP
  - Challenge the validity of rule 96(10);
  - Assess the Bill of Entries and make payment of IGST exemption availed;
  - Payback the refund of IGST claimed from customs



# Important Amendments

## ➤ **What is notification 16/2020 – CT and how it impacts the valuation of export r.w. circular 147?**

Ans: It requires that for the purpose of GST refund, the value of export cannot exceed 1.5 times of

- “value of similar or like goods” supplied domestically;
- By the same or similarly placed supplier;
- It does not specify the method or rules for deriving such valuation;
- Like goods, similar goods, similarly placed supplier is not defined;
- Whether supplies made in preceding or succeeding tax period can be considered?
- Whatever valuation is reduced from nominator should also be reduced from denominator.

# Clarification by way of circulars

- **What to do in case ITC of “T” month has been availed in subsequent month (say T+1 or T+2)?**

**Ans:** Refer para 61 of circular 125

- as per which ITC in GSTR 3B is to be availed on self declaration basis.
- Therefore, ITC AVAILED in GSTR 3B in the respective month is to be considered IRRESPECTIVE of whether the same was reflecting in GSTR 2A in preceding months.



# Clarification by way of circulars

- **Whether FOB value is to be considered or CIF / invoice value for the purpose of calculation of turnover?**

Ans: Refer para 47 of circular 125. It provides that “lower of invoice value or value declared in shipping bill” is to be considered.

- For valuation, section 15 is to be taken into consideration;
- Circular nowhere specifies “FOB value” to be considered;
- It is the limitation of ICEGATE portal that it shows only FOB value; whereas the shipping bill captures both FOB & CIF/invoice value;
- Since the realization is to happen on invoice value, the same should be considered as correct value

# Clarification by way of circulars

## ➤ How to claim refund on account of supplies made to merchant exporter (ME) at GST of 0.10%?

Ans: Refer para 59 of circular 125.

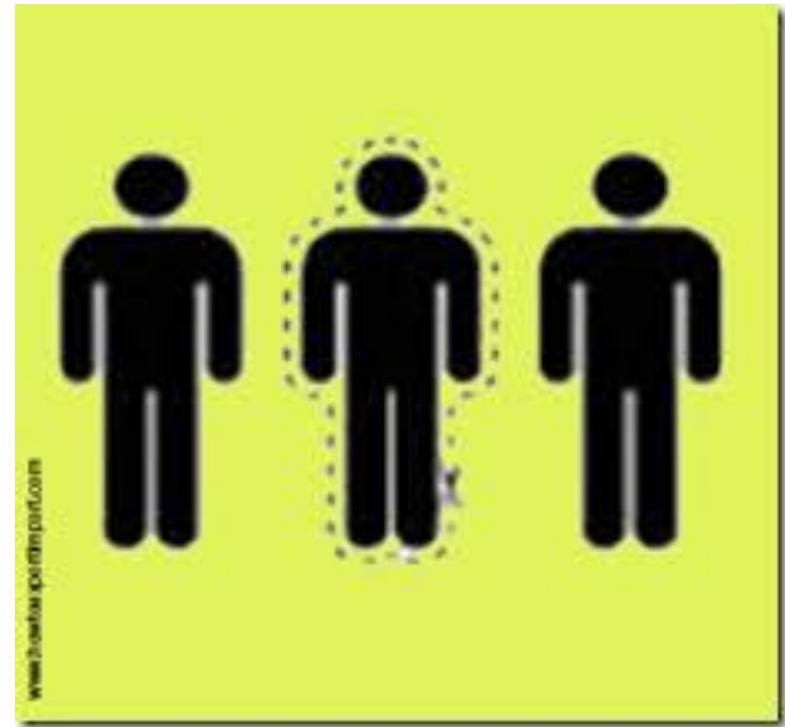
- Refund to be claimed by the supplier under IDS;
- It is worthwhile to note that refund under IDS is still allowed even if the supplier has purchased the goods and directly supplied it to ME;
- Here, manufacturing of goods is not important or mandatory; whereas in some cases of IDS, the authority insist that the input and output should be different;
- In some case, the ancillary items like packing material etc. are in higher rate than the trading inputs and outputs. By this logic, refund in this case can also be claimed. *[covered in subsequent slides]*

# Clarification by way of circulars

- How can merchant exporter claim the refund on further supplies?

Ans: He can claim refund under “export without payment of IGST” only and not ~~“With payment of IGST”~~;

- The logic is that the ME has procured goods at substantially lower rate and if he pays GST at full rate on export, then he will get undue refund. Therefore, EXPWOP is the only permissible and logical option in this case



# Intricacies and its probable solution

## ➤ Whether trader can claim refund under IDS?

Ans: In some cases, the authority are not allowing refund to traders;

- GST law does not distinguish b/w trader, manufacturer and service provider;
- Provision for IDS says that “the rate of INPUTS being higher than the rate of OUTPUT SUPPLIES”;
- Therefore, the output can be goods and / or service;
- There is no condition of PRINCIPAL INPUT or AUXILIARY INPUT;
- There is no condition that output should be different than input.



# Intricacies and its probable solution

- Whether a manufacturer who has done trading in raw material as well should consider that in the turnover and the ITC thereof for the purpose of GST refund?

Ans: No explicit restriction in the law for trading goods;

- In the formulae of IDS refund is as under:

# Refund under inverted Duty Structure [IDS]

Turnover of inverted rated	Tax payable on such
= supply of goods and services X Net ITC -	inverted rated supply
<hr/> $\text{Adjusted Total Turnover}$	of goods and services

# Intricacies and its probable solution

- Net ITC = ITC of Inputs (i.e. nowhere excludes the ITC of trading goods)
- Adjusted Total Turnover = Total turnover (i.e. nowhere excludes the turnover of trading goods)
- When trading turnover is considered in the denominator (i.e. Adj. Total Turnover), the ratio of IDS turnover is anyways reduced;
- Therefore, it will be at equilibrium if we consider ITC of trading goods in NET ITC.
- Refer the example in the next slide

# Intricacies and its probable solution

Sale	Value	GST rate	Liability
Manufacturing goods	700	5%	35
Trading goods	100	5%	5
Trading goods	200	12%	24
Total	1000		64
Purchase	Value	GST rate	ITC
Raw material Input (directly sold)	80	5%	4
Raw material Input (used in mfg)	450	12%	54
Raw material Input (directly sold)	150	12%	18
Input service	200	18%	36

	Option 1	Option 2
Particulars	Do not consider Trading turnover in the "IDS turnover" and in "tax payable on IDS"	Consider in both
IDS turnover	700	800
Adjusted Total turnover	1000	1000
Net ITC	76	76
Tax payable on IDS	35	40
Eligible refund	18.2	20.8

# Intricacies and its probable solution

## ➤ **Can an officer determine whether the ITC availed on any item is a capital goods and not input?**

Ans: It is always debateable whether certain item is INPUT or CAPITAL GOODS;

- Capital goods is defined as “the value of which is capitalized in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business”
- Whether to capitalize any item in the books of accounts is governed by Accounting standards and Accounting policies, which is responsibility of management and need to be audited by an Auditor.
- Hence, the field formation should not contend that any particular item should have been capitalized in the books of accounts and reject the refund thereon.

# Intricacies and its probable solution

**Whether ITC on only those Inputs will be available having direct nexus with the manufacturing process?**

- Certain field formations have rejected ITC on spares, stationery, packing material, consumable items on the ground that it does not have any direct nexus with the manufacturing activity;
- However, it has been clarified that the ITC of GST paid on such inputs should be available if not restricted u/s 17(5);
- In GST, the ITC of all the supplies which is used “in the course or furtherance of business” is available. Therefore, it cannot be said that particular supply has no direct nexus with the outward supplies.

# Clarification by way of circulars

- Whether time limit of 2 years is applicable in case of refund from cash ledger?

Ans: Circular 166 provides that time limit of 2 years is not applicable to cash ledger refund;

- Article 265 of the constitution defines the term “Tax”; balance lying in the cash ledger cannot be termed as “Tax”;
- It is just like wallet balance similar to bank accounts (which does not yield interest although!!);
- Refund from cash ledger balance cannot be compared with “excess payment of tax”, as the same is not even “tax”.



# Clarification by way of circulars

- **What are the documents required for cash ledger refund?**

Ans: Circular 166 clarifies the situation

- Since it is not the case of “incidence of tax being passed on”, no self-declaration / CA certificate is required;
- TDS/TCS deducted, which is credited to the cash ledger can also be claimed as refund, even though the same was credited to the cash ledger beyond 2 years;



# Clarification by way of circulars

## ➤ **What is the hierarchy of claiming refund from different heads?**

Ans: CGST Act or Rules does not provide any hierarchy for claiming refund from different heads;

- Till 4<sup>th</sup> September, 2018, there was no clarification on hierarchy of claiming refund;
- Law provides mechanism for utilization of the ITC from different head, as per which IGST is to be firstly utilized and then CGST and SGST in any proportion in any manner;
- However, for the purpose of refund, the circular provides that after utilization of IGST balance, the remaining amount of refund is to be claimed from CGST & SGST equally;
- This dictation looks arbitrary and needs revisit

# Clarification by way of circulars

Earlier checkpoints before 16 <sup>th</sup> April, 2018	Updated checkpoints w.e.f. 16 <sup>th</sup> April, 2018
<p>POOL-WISE (i.e. CGST, SGST &amp; IGST) Lowest of following:</p> <ul style="list-style-type: none"><li>- Refund calculated based on formulae (i.e. based on export ratio)</li><li>- ITC balance as on date of filing of refund claim</li></ul>	<ul style="list-style-type: none"><li>- Formulae for refund is to be applied in TOTAL (i.e. C+S+I)</li><li>- Total refund can be claimed from any of the three pools which is subject to lower of the following:<ul style="list-style-type: none"><li>➤ Pool-wise ITC Balance as on date of filing refund claim</li><li>➤ Pool-wise ITC balance after filing of 3B for which refund is claimed</li></ul></li></ul>
<p>There may be a situation that, based on the formulae, the assessee may be eligible for refund from all the pools, but may not have ITC balance in all the pools which caused loss of refund to the assessee.</p>	<p>Under the updated system, in case of insufficient balance in one pool, the assessee will be eligible to claim amount of refund from any other pool where sufficient balance is available.</p>

# Clarification by way of circulars

## ➤ What if above hierarchy is not followed in some cases?

Ans: As per para 38 of circular 125 (earlier circular 59/33/2018) –

*“for applications where this order is not adhered to by the applicant, no adverse view may be taken by the tax authorities”*

## ➤ What is the minimum amount of refund to be claimed?

Ans: Minimum amount is Rs. 1,000/- per head in case of refund from credit ledger;

- This limit is not applicable in case of refund from cash ledger



# Clarification by way of circulars

## ➤ **Whether GST refund is allowed in case of export of “NIL rated / exempted” supplies?**

Ans: Section 17(2) provides for reversal of ITC in case effecting “NIL rated / exempted” supplies;

- However, “NIL rated / exempted” supplies exclude zero-rated supplies of such product / service;
- Section 16(2) of the IGST Act, 2017 prescribes that input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.
- Therefore, refund on account of export of such NIL rated / exempted supplies will be available upon export thereof;
- Logically, export WP option cannot be exercised, since the rate of GST is NIL. Therefore, refund under EXPWOP should be filed.

# Validation in EXPWP refund

Code	Meaning	Possible solution
SB000	Successfully validated	NA
SB001	Invalid SB details	Amend SB details in table 9A of GSTR 1
SB002	EGM not filed	Approach shipping airline/ carrier
SB003	GSTIN mismatch	Amend GSTIN in the SB <b>(not possible once EGM filed)</b>
SB004	Record already received and validated	When such invoice no. or SB details have already transmitted to GSTN, this error code appears.
SB005	Invalid invoice number	Amend invoice no. in table 9A of GSTR 1
SB006	Gateway EGM not available	In case of exports through ICDs, if the gateway EGM is not filed electronically or it contains any error, this error appears. Exporters should approach shipping line to file it electronically.



# THANK YOU

Any Questions?

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