



REFUNDS



For the sake of brevity, any reference to a section unless otherwise specified shall be construed as reference to CGST Act. Likewise, any reference to a rule unless otherwise specified shall be construed as reference to CGST Rules, 2017.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- identify the situations leading to refund claim
- explain the time limit for claiming refund and concept of 'relevant date' to calculate such time limit
- identify the conditions to be satisfied and documents to be filed to claim the refund in different circumstances
- illustrate the circumstances under which refund claim may be withheld by the Department
- explain the 'principle of unjust enrichment'
- describe the provisions relating to 'Consumer Welfare Fund'.

1. 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.

**Timely Refunds
Mechanism**



The provisions pertaining to refund contained in the GST law aim to streamline and standardise the refund procedures under GST regime. 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 earlier time consuming and cumbersome procedure. Further, provisions relating to refund are more transparent as compared to provisions contained in the earlier indirect tax regime.



Chapter XI - Refunds [Sections 54 to 58] of the CGST Act and Chapter X – Refund [Rule 89 to 97] stipulates the provisions relating to refunds. State GST laws also prescribe identical provisions in relation to refunds.

Further, section 15 of the IGST Act prescribes for the refund of integrated tax paid on supply of goods to tourist leaving India.

Provisions of Refunds under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

Before proceeding into detailed provisions of the chapter, let us first go through the relevant definitions.

2. RELEVANT DEFINITIONS



- ❑ **Tourist:** “Tourist” means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes [Explanation to section 15 of the IGST Act].
- ❑ **Zero rated supply:** Zero-rated supply shall have the meaning assigned to it in section 16 [Section 2(23) of the IGST Act]. As per section 16(1) of IGST Act, “zero rated supply” 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.
- ❑ **Deemed Exports:** Deemed Exports means such supplies of goods as may be notified under section 147 [Section 2(39) of CGST Act].
 Section 147 stipulates that the Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.
- ❑ **Recipient of goods or services:** “Recipient” of supply of goods or services or both, means—
 - (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
 - (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
 - (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93) of CGST Act].

- ❑ **Turnover in State or turnover in Union territory:** "Turnover in State" or "turnover in Union territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess [Section 2(112) of CGST Act].

3. REFUND OF TAX [SECTIONS 54 OF THE CGST ACT]

A. 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 the CGST Rules, 2017 is an indicator of the various situations that may necessitate a refund claim. A claim for refund may arise in the following situations:



- (i) Goods or services or both are exported or, goods or services or both supplied to an SEZ developer/unit, on payment of IGST and refund of such IGST paid on goods or services or both supplied is claimed [Section 16(3)(b) of IGST Act].
- (ii) A registered person may claim refund of any unutilised input tax credit (ITC) at the end of any tax period in the following cases:
 - (a) **Zero rated supplies:** Supply of goods/services/both to an SEZ developer/unit or export of goods or services or both, and

(b) Accumulated ITC on account of inverted duty structure: 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 Council.

However, refund of unutilized ITC shall **NOT** be allowed if:

- ❖ the goods exported out of India are subjected to export duty;
 - ❖ the supplier of goods or services or both avails of drawback in respect of CGST or claims refund of the IGST paid on such supplies.
- (iii) Tax paid on the supply of goods regarded as deemed exports may be claimed by recipient.
- (iv) Refund of any balance in the electronic cash ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made there under may be claimed [Section 49(6)].
- (v) Refund on account of issuance of refund vouchers for taxes paid on advances against which goods or services have not been supplied, may be claimed [Section 31(3)].
- (vi) Refund of tax wrongly collected and paid to the Government [i.e. CGST & SGST paid by treating the supply as intra-State supply which is subsequently held as inter-State supply and vice versa [Section 77 of the CGST Act and section 19 of the IGST Act].
- (vii) The IGST paid by tourist leaving India on any supply of goods taken out of India by him [Section 15 of IGST Act].
- (viii) Tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court.
- (ix) On finalization of provisional assessment, if any tax becomes refundable to assessee (on account of assessed tax on final assessment being less than the tax deposited by the assessee) [Section 60].
- (x) Refund of taxes on purchase made by UN bodies or embassies etc. [Section 54(2)].

Detailed provisions relating to various sections referred above have been discussed in the respective chapters.

B. Time limit within which refund claim can be filed

- ❖ Any person claiming refund of any tax, interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of **2 years from the 'Relevant Date'** in such form and manner as may be prescribed [Section 54(1)].
- ❖ A registered person may claim refund of any unutilised ITC in case of zero rated supplies or accumulated ITC on account of inverted duty structure at the end of any tax period [Section 54(3)].

**C. Meaning of 'Relevant Date' [Explanation 2 to section 54]**

'Relevant Date' has been defined in Explanation 2 to section 54. Accordingly it means:-





S.No.	Cases	Relevant Date
1	In case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods and	
	(i) Goods are exported by sea or air	Date on which the ship or the aircraft in which such goods are loaded, leaves India
	(ii) Goods are exported by land	Date on which such goods pass the frontier
	(iii) Goods are exported by post	Date of dispatch of goods by the Post Office concerned to a place outside India

2	In case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods	Date on which the return relating to such deemed exports is furnished
3	In case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, and	
	(i) the supply of services had been completed prior to the receipt of such payment	Date of receipt of payment in convertible foreign exchange
	(ii) payment for the services had been received in advance prior to the date of issue of the invoice	Date of issue of Invoice
4	Where tax becomes refundable as a consequence of 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	In case of refund of unutilised ITC in case of zero rated supplies or accumulated ITC on account of inverted duty structure	End of the Financial Year in which such claim for refund arises
6	In the case where tax is paid	Date of adjustment of tax after the final

	provisionally under this Act or the rules made thereunder	assessment thereof
7	In the case of a person, other than the supplier	Date of receipt of goods or services or both by such person
8	Any other case	Date of payment of tax

D. Application for refund of tax, interest, penalty, fees or any other amount [Rule 89]

- ❖ Any person, except the persons covered by notification issued under section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application in Form GST RFD-01 electronically through GST common portal [Rule 89(1)].
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- ❖ However, **a registered person claiming refund of any balance in the electronic cash ledger in accordance with the provisions of section 49(6)**, instead of claiming the same in Form GST RFD-01, may claim such refund in the return furnished for the relevant tax period under section 39 in **Form GSTR-3/Form GSTR-4/Form GSTR-7**, as the case may be. Such return furnished shall be deemed to be a refund claim filed under section 54 [Proviso to section 54(1) read with first proviso to rule 89(1)].
 - ❖ **Supplies by Casual taxable person/Non-resident taxable person:** The amount of advance tax deposited by a casual taxable person or a non-resident taxable person under section 27(2), shall be refunded only when such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39 [Section 54(13)].
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Further, refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him [Fourth proviso to rule 89(1)].



❖ **Supplies regarded as deemed exports:**

In respect of supplies regarded as deemed exports, the application shall be filed by the recipient of deemed export supplies [Third proviso to rule 89(1)].

❖ **Supplies to a Special Economic Zone unit or a Special Economic Zone developer:** In respect of supplies to a SEZ unit/developer, the application for refund shall be filed by the -

- (a) supplier of goods after such goods have been admitted in full in the SEZ for authorised operations, as endorsed by the specified officer of the Zone.
- (b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of SEZ [Second proviso to rule 89(1)].

E. Documents for filing refund claim

Documents required for filing refund claim has been provided under the provisions of section 54(4) read with rule 89(2).

Section 54(4) of the CGST Act stipulates that the application shall be accompanied by —

- (a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and
- (b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that there is no unjust enrichment (i.e. the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person).



However, where the amount claimed as refund is less than ₹2 lakh, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that there is no unjust enrichment i.e. the incidence of such tax and interest had not been passed on to any other person.

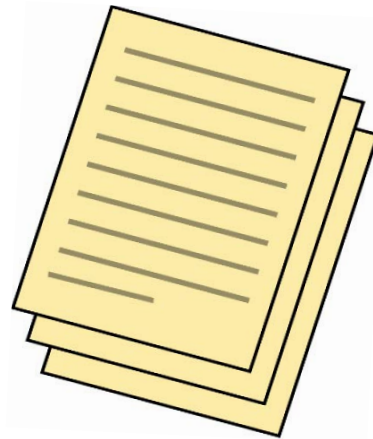
In pursuance of said provisions, rule 89(2) has provided that the application for filing of refund claim shall be accompanied by any of the following documentary evidences as applicable, in Annexure 1 of Form GST RFD-01 for refund claim, to establish that a refund is due to the applicant:

- ✓ the reference number of the order and a copy of the order passed by the proper officer or an Appellate Authority or Appellate Tribunal or Court resulting in such refund or reference number of the payment of the amount specified in section 107(6) and section 112(8) claimed as refund (i.e. amount to be deposited at the time of filing of appeal before Appellate Authority or Appellate Tribunal).
- ✓ a statement containing the number and date of shipping bills or bills of export and the number and date of relevant export invoices, **in a case where the refund is on account of export of goods.**
- ✓ a statement containing the number and date of invoices and the relevant Bank Realization Certificates or Foreign Inward Remittance Certificates, as the case may be, **in a case where the refund is on account of export of services.**
- ✓ a statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding goods admitted in full for authorized operations as endorsed by the specified officer of SEZ **in case of supply of goods made to a SEZ unit or a SEZ developer.**
- ✓ a statement containing the number and date of invoices, the evidence regarding receipt of services for authorized operations as endorsed by the specified officer of SEZ, and the details of payment, along with proof



thereof, made by the recipient to the supplier for authorized operations as defined under the SEZ Act, 2005, **in a case where the refund is on account of supply of services made to a SEZ unit or a SEZ developer.**

- ✓ a declaration to the effect that the SEZ unit or the SEZ developer has not availed of the ITC of the tax paid by the supplier of goods or services or both, **in a case where the refund is on account of supply of goods or services made to a SEZ unit or a SEZ developer.**
- ✓ a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, **in a case where the refund is on account of deemed exports.**
- ✓ a statement containing the number and the date of the invoices received and issued during a tax period in a **case where the claim pertains to refund of any unutilised ITC under section 54(3) where the credit has accumulated on account of inverted duty structure, other than nil-rated or fully exempt supplies.**
- ✓ 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.**
- ✓ a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;
- ✓ a statement showing the details of the amount of claim on account of excess payment of tax;
- ✓ a declaration to establish that there is not unjust enrichment in the case of the applicant [i.e. 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 ₹2 lakh.**



However, **where the amount of refund claimed exceeds ₹2 lakh**, a Certificate in Annexure 2 of Form GST RFD-01 by a Chartered Accountant or a Cost Accountant to the effect that there is not unjust enrichment in the case of the applicant [i.e. incidence of tax, interest or any other

amount claimed as refund has not been passed on to any other person.

Further, **neither a declaration by the applicant nor a certificate by a Chartered Accountant/Cost Accountant** is not required to be furnished in the following cases:

- (a) refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies;
- (b) refund of unutilised ITC in case of zero rated supplies or accumulated ITC on account of inverted duty structure;
- (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. The expression **"invoice"** referred here means invoice conforming to the provisions contained in section 31.
- (d) refund of tax in pursuance of section 77, i.e. tax paid tax on a transaction treating it as an intra-State supply, but which is subsequently held to be an inter-State supply or vice-versa.
- (e) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.



Where the amount of tax has been recovered from the recipient, it shall be deemed that THE 'INCIDENCE OF TAX HAS BEEN PASSED ON TO THE ULTIMATE CONSUMER'. [Explanation (ii) to rule 89]

F. Amount to be claimed as refund in case of zero rated supply of goods or services and on account of inverted duty structure

Rule 89(4) stipulates that in the case of **zero-rated supply of goods or services or both** without payment of tax under bond/LUT in accordance with the provisions of section 16(3) of the IGST Act, 2017, refund of ITC shall be granted as per the following formula:



$$\text{Refund Amount} = \frac{(\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services})}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

where,-

- A. **"Refund amount"** means the maximum refund that is admissible;
- B. **"Net ITC"** means ITC availed on inputs and input services during the relevant period;
- C. **"Turnover of zero-rated supply of goods"** means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond/LUT;
- D. **"Turnover of zero-rated supply of services"** means the value of zero-rated supply of services made without payment of tax under bond or LUT, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period.

- E. **"Adjusted Total turnover"** means the turnover in a State or a Union territory, as defined under section 2(112), excluding the value of exempt supplies other than zero-rated supplies, during the relevant period;
- F. **"Relevant period"** means the period for which the claim has been filed.

Rule 89(5) of the CGST Rules, 2017 stipulates that in the case of refund on account of **inverted duty structure**, refund of ITC shall be granted as per the following formula -



$$\text{Maximum Refund Amount} = \frac{\text{Turnover of inverted rated supply of goods} \times \text{Net ITC}}{\text{Adjusted Total Turnover}} - \text{Tax payable on such inverted rated supply of goods}$$

where,-

- A. **"Refund amount"** means the maximum refund that is admissible;
- B. **"Net ITC"** means input tax credit availed on inputs and input services during the relevant period;
- C. **"Adjusted Total turnover"** means the turnover in a State or a Union territory, as defined under section 2(112), excluding the value of exempt supplies other than zero-rated supplies, during the relevant period.

Where the application relates to refund of ITC, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed [Rule 89(3)].

G. Acknowledgment of refund claim [Rule 90]

I. Where the application relates to a claim for refund from the electronic cash ledger:

An acknowledgment in prescribed form shall be made available to the applicant through the Common Portal electronically, clearly indicating the date of filing of the claim for refund ** [Rule 90(1)].



II. Where the application relates to a refund claim other than claim for refund from the electronic cash ledger:

- The application shall be forwarded to the proper officer.

- ❑ The proper officer shall, within a period of 15 days of filing of the said application, scrutinize the application for its completeness.
- ❑ Where the application is found to be complete in terms of rule 89, an acknowledgement in prescribed form shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing** of the claim for refund [Rule 90(2)].

***The time period specified in section 54(7) [discussed in subsequent paras in this chapter] shall be counted from such date of filing.*

III. Deficiencies in refund claim:

- ❑ Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in prescribed form through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies [Rule 90(3)].
- ❑ Where deficiencies have been communicated to applicant under the SGST Rules, 2017, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under CGST Rules, 2017 [Rule 90(4)].

H. Order of refund [Section 54(5), (7) read with rule 92]

- ❑ Section 54(5) stipulates that if, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Consumer Welfare Fund *[discussed in detail in subsequent paras]*.



- ❑ Refund order shall be issued by the proper officer within **60 days from the date of receipt of application** complete in all respects [Section 54(7)].

The time limit of 60 days shall be counted from the date of filing claim for refund as mentioned in the acknowledgment received for refund claim [Section 54(7) read with rule 90(1) and 90(2)].

- Rule 92(1) provides that

--where, upon examination of the application, the proper officer is satisfied that a refund under section 54(5) is due and payable to the applicant,

--he shall make an order in Form GST RFD-06 sanctioning

the amount of refund to which the applicant is entitled,

--mentioning therein the amount, if any, refunded to him on a provisional basis in case of zero rated supplies under section 54(6) [discussed in subsequent paras], amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable.



Amount of refund completely adjusted against any outstanding demand: In cases where the amount of refund is completely adjusted against any outstanding demand*, an order giving details of the adjustment shall be issued [Proviso to rule 92(1)].

* under the Act or under any existing law

Amount of refund liable to be withheld: Where the proper officer/Commissioner is of the opinion that the amount of refund is liable to be withheld under the provisions of section 54(10)/(11) [discussed in detail later in this chapter], he shall pass an order informing the applicant the reasons for withholding of such refund [Rule 92(2)].

- **Where the proper officer is satisfied that the amount refundable is payable to the applicant under section 54(8)*,** he shall make an order in Form GST RFD-06 and issue a payment advice for the amount of refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund [Rule 92(4)].

- Where the proper officer is satisfied that the amount refundable is not payable to the applicant under section 54(8), he shall make an order in Form GST RFD-06 and issue an advice for the amount of refund to be credited to the **Consumer Welfare Fund** [Rule 92(5)]

**Section 54(8) lists the circumstances in which the refundable amount is to be paid to the applicant instead of being credited to the Consumer Welfare Fund.*

I. **Grant of provisional refund [Section 54(6) read with rule 91]**

- The proper officer may, in the case of any claim for **refund on account of zero-rated supply of goods or services or both** made by registered persons,
- other than such category of registered persons as may be notified by the Government on the recommendations of the Council,
- refund on a provisional basis, 90% of the total amount so claimed**, excluding the amount of ITC provisionally accepted
- in such manner and subject to such conditions, limitations and safeguards as may be prescribed** and
- thereafter make an order under section 56(5) for final settlement of the refund claim after due verification of documents furnished by the applicant.



**PROVISIONAL
REFUND**

****Conditions, limitations and safeguards** have been prescribed under rule 91 of the CGST Rules, 2017. It stipulates as following:

- Where the amount of tax evaded exceeds ₹ 2.5 crores**, the provisional refund shall be granted subject to the condition that the person claiming refund has, during any period of 5 years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law.
- The proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being prima facie satisfied that the amount claimed as refund is due to the applicant in accordance with the provisions of section 54(6), shall make an order in prescribed form, sanctioning the amount of refund due to the said applicant on a

provisional basis within a period not exceeding 7 days from the date of the acknowledgement.

- ❑ The proper officer shall issue a payment advice for the amount sanctioned and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

J. Principal of Unjust Enrichment [Section 54(8) & (9)]

- ❑ Theory of unjust enrichment postulates that only the person who has **NOT** passed the incidence of tax will be eligible to claim the refund. Under GST law, related provisions are contained under section 54(8).



- ❑ Under 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 refund claim if sanctioned is first transferred to the Consumer Welfare Fund.
- ❑ If the refund claim of refund (barring specified exceptions) passes the test of unjust enrichment, it is paid to the applicant. 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 (IGST instead of CGST + SGST 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 [*Listed below in detail*]. 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 ₹ 2 lakh, 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 ₹ 2 lakh, a certificate from a Chartered Accountant/Cost Accountant will have to be given.
- ❑ **Cases where refundable amount shall be paid to the applicant:**
Section 54(8) stipulates that the refundable amount shall, instead of being credited to the **Consumer Welfare Fund**, be paid to the applicant, if such amount is relatable to —

- (a) refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies;
- (b) refund of unutilized ITC in case of zero rated supplies or accumulated ITC on account of inverted duty structure;
- (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, i.e. tax paid tax on a transaction treated to be an intra-State supply, but which is subsequently held to be an inter-State supply or vice-versa.;
- (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.



Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in

accordance with the provisions of sub-section (8). Instead, refundable amount shall be credited to Consumer Welfare Fund [Section 54(9)].

K. Issue of SCN and rejection of refund claim [Rule 92(3)]

- Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice to the applicant.
- Applicant will be required to furnish a reply within 15 days of the receipt of such notice.
- The proper officer shall, after considering the reply furnished by applicant and after giving him an opportunity of being heard, make an order in Form GST RFD-06, sanctioning the amount of refund in whole or part, or rejecting the said refund claim.
- The said order shall be made available to the applicant electronically and the provisions of rule 92(1) relating to order sanctioning refund shall, mutatis mutandis, apply to the extent refund is allowed.
- No application for refund shall be rejected without giving the applicant an opportunity of being heard [Rule 92(3)].



L. Withholding of refund claim [Section 54(10), (11) & (12)]

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.

However, it has been adequately safeguarded by provision for payment of interest @ 6% if, as a result of appeal, or further proceedings, the applicant becomes eligible for refund. These provisions have been discussed in detail as under:

- ❑ Where any refund is due in case of zero rated supplies or accumulated ITC on account of inverted duty structure, to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any Court, Tribunal or Appellate Authority by the **specified date**^{**}, the proper officer may:
 - (a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;
 - (b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

****Specified date** shall mean the last date for filing an appeal under this Act [Section 54(10)].

- ❑ 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 [Section 54(11)].

Where the proper officer/Commissioner is of the opinion that the amount of refund is liable to be withheld under the provisions of section 54(10)/(11), he passes an order informing the applicant the reasons for withholding of such refund [Rule 92(2)].

- ❑ However, where a refund is withheld under section 54(11), the taxable person shall, notwithstanding anything contained in section 56, be entitled to **interest @ 6% p.a.***, if as a result of the appeal or further proceedings he becomes entitled to refund [Section 54(12)].

as notified vide **Notification No. 13/2017 CT dated 28.06.2017*

M. Minimum refund claim [Section 54(12)]

No refund shall be paid to an applicant, if the amount is less than ₹ 100.

N. Credit of the amount of rejected refund claim [Rule 93]

- ❑ Where any deficiencies have been communicated under rule 90(3), the amount earlier debited under rule 89(3) shall be re-credited to the electronic credit ledger [Rule 93(1)].
- ❑ Where any amount claimed as refund is rejected under rule 92, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in prescribed form [Rule 93(2)].
- ❑ For the purposes of this rule, a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal [Explanation to rule 93].

O. Refund of integrated tax paid on goods exported out of India [Rule 96]

- ❑ The shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:
 - (a) the person in charge of the conveyance carrying the export goods duly files an export manifest or an export report covering the number and the date of shipping bills or bills of export; and
 - (b) the applicant has furnished a valid return in Form GSTR-3/Form GSTR-3B.
- ❑ The details of the relevant export invoices contained in Form GSTR-1 shall be transmitted electronically by the GST common portal to the system designated by the Customs.



The said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

- ❑ Upon the receipt of the information regarding the furnishing of a valid return in Form GSTR-3/Form GSTR-3B from the common portal, the system designated by the Customs shall process the claim for refund and an amount equal to the integrated tax paid in respect of each shipping bill/bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.



- ❑ The claim for refund shall be withheld where:
 - (a) a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of section 54(10)/(11); or
 - (b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.
- ❑ Where refund is so withheld, 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.
- ❑ Upon transmission of said intimation, the proper officer of central tax or State tax or Union territory tax, as the case may be, shall pass an order in prescribed form.
- ❑ Where the applicant becomes entitled to refund of the amount withheld, the concerned jurisdictional officer of central tax, State tax or Union territory tax, as the case may be, shall proceed to refund the amount after passing an order.

- ❑ The Central Government may pay refund of the integrated tax to the Government of Bhutan on the exports to Bhutan for such class of goods as may be notified in this behalf and where such refund is paid to the Government of Bhutan, the exporter shall not be paid any refund of the integrated tax.

P. Refund of integrated tax paid on export of goods or services under bond or Letter of Undertaking (LUT) [Rule 96A]

- ❑ Any registered person availing the option to supply goods/services for export without payment of IGST shall furnish, prior to export, a bond/LUT in prescribed form to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under section 50(1) [*@ 18% p.a.**] within a period of:
 - (a) 15 days after the expiry of 3 months from the date of issue of the invoice for export, if the goods are not exported out of India; or
 - (b) 15 days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange [Rule 96A(1)].

**** as notified by Notification No. 13/2017 CT dated 28.06.2017***

- ❑ The details of the export invoices contained in Form GSTR-1 furnished on the GST common portal shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system.



- ❑ Where the goods are not exported within the time specified in rule 96A(1) and the registered person fails to pay the amount mentioned in said sub-rule, the export as allowed under bond/LUT shall be withdrawn

forthwith and the said amount shall be recovered from the registered person in accordance with the provisions of section 79 [Discussed in detail in Chapter 19 – Demands and Recovery].

- ❑ The export as allowed under the bond/LUT withdrawn shall be restored immediately when the registered person pays the amount due.
- ❑ The Board, by way of notification, may specify the conditions and safeguards under which a Letter of Undertaking may be furnished in place of a bond.
- ❑ The provisions of rule 96A(1) shall apply, *mutatis mutandis*, in respect of zero-rated supply of goods or services or both to a SEZ developer or a SEZ unit without payment of integrated tax.]



4. REFUND TO UN BODIES, EMBASSIES, ETC. [SECTION 55 READ WITH SECTION 54(2) OF CGST ACT]

Supplies made to UN bodies and embassies may be exempted from payment of GST as per international obligations. However, this exemption has been 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 6 months from the last day of the quarter in which such supply was received. Detailed provisions have been discussed hereunder:

A. Who is entitled to refund under section 55?

Government may, on the recommendations of the Council, by notification, specify:

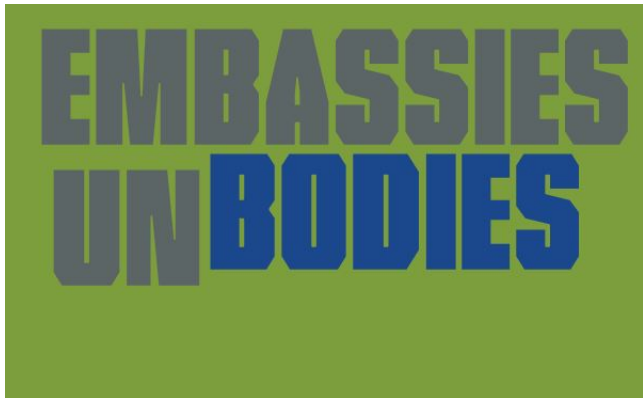
- (i) any specialised agency of the United Nations Organisation; or
- (ii) any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947; or



- (iii) Consulate or Embassy of foreign countries; and
- (iv) any other person or class of persons as may be specified in this behalf, who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified inward supplies of goods or services or both received by them.

B. Time Limit for filing refund claim [Section 54(2) read with rule 95(1)]

Persons eligible to claim refund under section 55 [as mentioned in point A. above], entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, once in every



quarter, but before the expiry of 6 months from the last day of the quarter in which such supply was received.

C. Form and documents for filing the refund claim [Rule 95(1)]

Persons eligible to claim refund under section 55 shall submit the application for refund:

- in a **different prescribed form**, electronically on the common portal,
- along with a **Statement of the Inward Supplies of goods or services or both** in **Form GSTR-11** [discussed in detail in Chapter 13- Returns], prepared on the basis of the Statement of the Outward Supplies furnished by the corresponding suppliers in Form GSTR-1.

D. Acknowledgment for refund claim [Rule 95(2)]

An acknowledgement for receipt of the application for refund shall be issued in a prescribed form.

E. Conditions to be satisfied for sanction of refund [Rule 95(3) & (4)]

Refund of tax paid by the applicant shall be available if all the following conditions are satisfied-

- (a) the inward supplies of goods or services or both were received from a registered person against a tax invoice and the price of the supply covered under a single tax invoice exceeds ₹5,000, excluding tax paid, if any.
- (b) name and GSTIN or UIN of the applicant is mentioned in the tax invoice.
- (c) such other restrictions or conditions as may be specified in the notification are satisfied.

The provisions of rule 92, as discussed earlier in this chapter shall, *mutatis mutandis*, apply for the sanction and payment of refund under this rule.

F. Supremacy provision in case of inconsistency [Rule 95(5)]

Where an express provision in a treaty or other international agreement, to which the President or the Government of India is a party, is inconsistent with the provisions of these rules, such treaty or international agreement shall prevail.

5. INTEREST ON DELAYED REFUNDS [SECTION 56 OF CGST ACT]

A. Interest on amount refundable consequent to order passed by Proper Officer under section 54(5)

- Where any tax ordered to be refunded under section 54(5) to any applicant is **not refunded within 60 days** from the date of receipt of application under section 54(1), interest shall be payable to the applicant.
- Interest is **payable on such refund @ 6% p.a.***.
- Interest is payable from the date immediately after the expiry of 60 days from the date of receipt of application under the section 54(1) till the date of refund of such tax [Section 56 of CGST Act].



**as notified vide Notification No. 13/2017 CT dated 28.06.2017*

B. Interest on amount refundable consequent to order passed in an appeal or further proceedings

- Where any claim of refund arises from an order passed by an Adjudicating

Authority or Appellate Authority or Appellate Tribunal or Court which has attained finality and the same is **not refunded within 60 days from the date of receipt of application** filed consequent to such order, interest shall be payable on such refund.

- Interest is **payable on such refund @ 9% p.a.***.
- Interest is payable from the date immediately after the expiry of 60 days from the date of receipt of application till the date of refund. [Proviso to Section 56 of CGST Act].

as notified vide **Notification No. 13/2017 CT dated 28.06.2017*

For the purpose of this section, the order of refund made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under section 54(5), shall also be deemed to be an order passed under the said section 54(5) [Explanation to section 56].

C. Order sanctioning interest on delayed refunds [Rule 94]

- Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment advice in prescribed form.
- Such order shall specify therein:
 - ❖ the **amount of refund** which is delayed,
 - ❖ the **period of delay** for which interest is payable and
 - ❖ the **amount of interest** payable.
- Such interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.



6. CONSUMER WELFARE FUND [SECTIONS 57 & 58 OF CGST ACT]

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.

As already discussed in this chapter, amount of refund is paid to the applicant in case where there is no unjust enrichment; i.e. the incidence of tax has not been passed by the supplier to the recipient as also in the circumstances where the principle of unjust enrichment is not applicable [specified in section 54(8)]. Otherwise, the said amount is credited to the Consumer Welfare Fund.

A. Amount to be credited to Consumer Welfare Fund

Section 57 of the CGST Act stipulates that the Government shall constitute a Fund, to be called the **Consumer Welfare Fund** and there shall be credited to the Fund:

- (a) Amount of refund determined by an order passed under section 54(5),
- (b) any income from investment of the amount credited to the Fund; and
- (c) such other monies received by it,

in such manner as may be prescribed. Such manner has been prescribed under rule 97 of the CGST Rules, 2017.



B. Amounts to be credited to/paid from Consumer Welfare Fund [Rule 97 of the CGST Rules, 2017]

- All credits to the Consumer Welfare Fund shall be made under rule 92(5) [discussed earlier in this chapter] [Rule 97(1)].
- 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)].


C. Utilisation of Consumer Welfare Fund [Section 58 of the CGST Act, 2017 read with rule 97 of the CGST Rules, 2017]

- Purpose for which Fund may be utilized**
 - ❖ All sums credited to the Consumer Welfare Fund shall be utilised by

the Government for the welfare of the consumers in such manner as may be prescribed [Section 58(1) of the CGST Act].

- ❖ 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)].
- ❖ The Central Consumer Protection Council and the Bureau of Indian Standards shall recommend to the GST Council, the broad guidelines for considering the projects or proposals for the purpose of incurring expenditure from the Consumer Welfare Fund [Rule 97(8)].

□ **Person who may apply for grant from Consumer Welfare Fund**

- ❖ Any agency or organisation engaged in consumer welfare activities for a period of 3 years registered under the provisions of the Companies Act, 2013 or under any other law for the time being in force, including village or mandal or samiti level cooperatives of consumers especially Women, Scheduled Castes and Scheduled Tribes, or any industry as defined in the Industrial Disputes Act, 1947 recommended by the Bureau of Indian Standards to be engaged for a period of five years in viable and useful research activity which has made, or is likely to make, significant contribution in formulation of standard mark of the products of mass consumption, the Central Government or the State Government may make an application for a grant from the Consumer Welfare Fund :
 
- ❖ However, a consumer may make application for reimbursement of legal expenses incurred by him as a complainant in a consumer dispute, after its final adjudication.

❑ Maintenance of Books of Accounts

The Government or the authority specified by it shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in such form as may be prescribed in consultation with the CAG (Comptroller and Auditor-General of India).

🕒 7. REFUND OF INTEGRATED TAX PAID ON SUPPLY OF GOODS TO TOURIST LEAVING INDIA [SECTION 15 OF IGST ACT]

- ❑ The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.
- ❑ The term **“tourist”** means a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes.



TEST YOUR KNOWLEDGE

1. List the persons entitled to refund under section 55 of the CGST Act, 2017.
2. Discuss the provisions relating to refund of the amount of advance tax deposited by a casual taxable person under section 27(2) of the CGST Act, 2017.
3. Royal Industries wishes to claim refund of ITC accumulated on account of inverted duty structure. Can it do so? If yes, specify the time-limit within which the refund can be claimed by Royal Industries as provided under the CGST Act.

Note: Output supplies of Royal Industries are not nil rated/fully exempt supplies.

4. A taxable person has mistakenly paid CGST and SGST for an inter-State supply. Subsequently, when he discovers the same, can he adjust the IGST liability against the wrongly paid CGST and SGST?
5. State the exceptions to the principle of unjust enrichment as applicable to refund claims.

ANSWER / HINTS

1. Government may, on the recommendations of the Council, by notification, specify:
 - (i) any specialised agency of the United Nations Organisation; or
 - (ii) any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947; or
 - (iii) Consulate or Embassy of foreign countries; and
 - (iv) any other person or class of persons as may be specified in this behalf, who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified inward supplies of goods or services or both received by them [Section 55 of the CGST Act].
2. The amount of advance tax deposited by a casual taxable under section 27(2), shall be refunded only when such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39 [Section 54(13)].
 Further, refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him [Fourth proviso to rule 89(1)].

3. 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 Council, refund of the unutilized ITC is allowed [First proviso to section 54(3)]. Thus, in the given case, Royal Industries is entitled to refund.

Further, a person claiming refund is required to file an application before the expiry of 2 years from the relevant date. The term 'relevant date' as explained in the Explanation to section 54 of the CGST Act, *inter alia*, stipulates that in case of refund of unutilized ITC on account of inverted duty structure is relevant date is the end of the financial year in which such claim for refund arises.

4. Section 77, *inter alia*, stipulates that a registered person who has paid the Central tax and State tax or, as the case may be, the central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

The IGST liability cannot be adjusted against the CGST and SGST wrongly paid.

5. The principle of unjust enrichment is applicable in all cases of refund except in the following cases:-
 - i. Refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies.
 - ii. Unutilized input tax credit in respect of (i) zero rated supplies made without payment of tax or, (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies.
 - iii. refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued.
 - iv. refund of tax in pursuance of section 77 of CGST/SGST Act i.e. tax wrongfully collected and paid to Central Government or State Government.
 - v. if the incidence of tax or interest paid has not been passed on to any other person.
 - vi. such other class of persons who has borne the incidence of tax as the Government may notify.