A DISCUSSION ON REFUNDS UNDER THE GST ACT

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A person can claim refund under Section 54 of the excess GST if any excess GST has been paid or there is any input tax credit which has not been utilised. Refund can be claimed by filing an application for the same online. To ensure that excess GST does not get blocked with the government, rules have been framed for quick release of GST refund. A claim of GST refund can be filed under the following circumstances:

- In case of excess GST paid due to mistake
- In case of export of Goods or Services
- Supplies to SEZ units and developers
- Deemed Exports
- Refund of pre-deposit
- Refund of accumulated Input Tax Credit on account of inverted duty structure
- Refund of taxes on purchase made by the UN or embassies etc
- Finalisation of provisional assessment
- Refund arising on account of Judgement Decree, Order or Direction of the Appellate Authority, Appellate Tribunal or any court
- Refund to International Tourists of GST paid on goods in India and carried abroad at the time of their departure from India.
- Refund on account of issuance of refund vouchers for taxes paid on advances against which goods or services have not been supplied
- Refund of CGST & SGST paid by treating the supply as intra-state supply which is subsequently held as inter-state supply and vice-versa

GST refund can be claimed by filing an application for GST refund online in form GST RFD 01 and shall be filled within a maximum of 2 years from the relevant date. Once the online application has been filled it would be forwarded to the GST officer who will within a period of 15 days of filing of the application scrutinize the application for its completeness and if the application is found to be complete in all aspects, an acknowledgement in form GST RFD 02 shall be made available to the applicant through GST website which will clearly mention the date of filing of the claim for refund and the time period for refund shall be counted from this date.

In case of any discrepancies the GST officer shall communicate the deficiencies to the applicant in form GST RFD 03 through the GST website.

For the purpose of refund in GST the relevant date for filing of GST RFD 01 shall be different in different cases as summarised in the table below:

<table>
<thead>
<tr>
<th>Reason for claiming GST refund</th>
<th>Relevant date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goods are exported through air or sea</td>
<td>Date on which ship/aircraft leaves India</td>
</tr>
<tr>
<td>Goods are exported by land vehicle</td>
<td>Date on which goods cross the land frontier of the country</td>
</tr>
<tr>
<td>Goods are exported through post</td>
<td>Date of dispatch of goods from the Post Office</td>
</tr>
<tr>
<td>Supplies include services which are completed before the receipt of payment</td>
<td>Payment receipt date</td>
</tr>
<tr>
<td>Services are performed after the receipt of advance</td>
<td>Invoice date</td>
</tr>
<tr>
<td>--------------------------------------------------</td>
<td>-------------</td>
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<tr>
<td>Refund claim made for excess Input Tax Credit unutilised</td>
<td>End of the financial year for which the refund claim is being made</td>
</tr>
<tr>
<td>Goods are supplied to SEZ or 100% EOU</td>
<td>Return filing date relating to such deemed exports</td>
</tr>
<tr>
<td>Refund arising due to an order passed in the favour of the appellant</td>
<td>Date of such order</td>
</tr>
<tr>
<td>Tax was paid on the basis of provisional assessment and now refund arises</td>
<td>Date on which such tax was adjusted</td>
</tr>
<tr>
<td>When the person claiming the refund is not the supplier</td>
<td>Date on which goods are received by such person</td>
</tr>
<tr>
<td>All other cases</td>
<td>Date of payment of tax</td>
</tr>
</tbody>
</table>

The refund on provisional basis shall be issued in Form GST RFD 04 within 7 days from the date of acknowledgement. In case of refund due to Zero Rated Supplies like exports, the GST officer shall sanction the 90% of the amount of GST Refund on provisional basis within 7 days. The balance refund shall be issued within 60 days. If the refund is not issued within 60 days, interest @ 6% p.a. under Section 56 would be payable from the 61st day. The interest amount will be electronically credited to the bank account of the applicant.

Note that, the provisional refund would not be granted to a person who was prosecuted during any period of previous 5 years preceeding the refund period or under any other existing law where the tax evaded exceeds 2.5 lakhs.

**GST Refund in case of exports without payment of IGST**

In case of export of goods or services or both without the payment of tax on submission of Bond, the refund of input tax credit shall be calculated as:

\[
Refund\,\,Amount = (\text{Turnover}\,\,\,\text{of}\,\,\,\text{Zero} \,\,\,\,\text{rated} \,\,\,\,\text{supply} \,\,\,\,\text{of} \,\,\,\,\text{goods} \,\,\,\,\text{+turnover}\,\,\,\,\text{of} \,\,\,\,\text{zero} \,\,\,\,\text{rated} \,\,\,\,\text{Supply} \,\,\,\,\text{of} \,\,\,\,\text{services}) \times \frac{\text{Net ITC}}{\text{Adjusted turnover}}
\]

Where,

- Refund Amount means the maximum amount which is refundable
- Net ITC means input tax credit availed on inputs and input services during the relevant period
- Turnover of zero rated supply of services means value of zero rated supply of services made without payment of tax under bond.

Adjusted Total Turnover means the turnover excluding the value of exempt supplies other than zero rated supplies during the relevant period. Relevant period for the purpose of above definition means the period for which the application refund has been filed.

**The GST Refund of Input Tax Credit arises in following three circumstances :**

1. Input Tax credit unutilised when the goods/services supplied are zero rated or exempt from GST.
2. Where the input goods/services have higher tax rate and output goods/services have a lower tax rate.
3. In case of partial Reverse charge, where input tax credit cannot be completely used against the output tax.

The input tax in the above three cases shall be granted as:

\[
\text{Maximum Refund Amount} = ((\text{Turnover}\,\,\,\,\text{of inverted rate of supply of goods}) \times (\frac{\text{Net ITC}}{\text{Adjusted turnover}})) - \text{Tax payable on such inverted Rate of supply of goods}
\]
Note that,

- No refund shall be issued in case the amount of refund is less than Rs. 1000
- In cases where the application for GST Refund relates to refund of Input Tax Credit, the electronic ledger shall be debited by the refund so claimed
- Un Bodies and embassies can claim refund of GST paid by them within a period of 6 months from the end of the quarter in which such supply was received
- Tourists can also claim refund of GST paid by them during their stay in India. The term “tourist” for the above condition has been defined as a person who is not normally a resident of India and who enters India for stay not more than 6 months for legitimate non-immigrant purposes.
- In case of refund due to Casual Taxable Person or to a non-resident taxable person on account of advance tax deposited, such refund shall not be granted until such person has filed all returns for the entire period for which the certificate of registration was granted to him.

**DOCTRINE OF UNJUST ENRICHMENT UNDER THE GST REGIME**

"Doctrine of Unjust Enrichment" is a term which is generally used by the Customs and Central Excise authorities in the matter of claim for refund of excess paid duty. Whenever it is found by the Customs and Central Excise authorities that the party is entitled for refund of duty and incidence of duty has not been passed on to any other person, refund amount is sanctioned and paid to the party since it is not hit by the doctrine of unjust enrichment. However, if it is found that incidence of duty has been passed on to any other person or if the party fails to submit evidence that incidence of duty has not been passed on to any other person, refund amount is sanctioned but credited to the Consumer Welfare Fund since it is hit by the doctrine of unjust enrichment. Interestingly, most of the refunds are sanctioned but they find their way to the Consumer Welfare Fund alleging that the claims are hit by the doctrine of unjust enrichment & by citing a plethora of case laws.

'Unjust enrichment' means retention of a benefit by a person that is unjust or inequitable. 'Unjust enrichment' occurs when a person retains money or benefit which belongs to someone else in justice, equity and good conscience. The 'doctrine of unjust enrichment', therefore, is that no person can be allowed to enrich inequitably at the expense of another. A right of recovery under the 'doctrine of unjust enrichment' arises where retention of a benefit is considered contrary to justice or against equity.

Due to the doctrine of unjust enrichment, unnecessary hardships is caused to the party. As such, protracted litigation in refund claim is created. Strangely, doctrine of unjust enrichment is also applied in the case of refund of amount deposited(not towards duty) during investigation, appeal or provisional assessment. If the party gets consequential relief from the appellate authority or court in the matter of fine and penalty, doctrine of unjust enrichment is also applied in these cases of refund. As a result of protracted litigation due to doctrine of unjust enrichment, several cases of refunds are pending before the appellate authorities and courts.

As we all know getting refund from Government is always a tedious task, and the most difficult task is to pass the unjust enrichment test i.e. to satisfy the Departmental officer that incidence of tax/duty has not been passed on to another person. The same test of unjust enrichment has to be passed under GST also, while claiming the refund under Section 38 of the CGST /IGST Act. The application which is filed for claiming refund under section 38, will be accompanied by prescribed documents or evidences, to prove that the amount of tax and interest, in relation to which refund is claimed, the incidence of such tax and interest has not been passed on by the applicant to any other person.

The principle of unjust enrichment would be 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; such other

**Accounting should be done in proper manner**

Balance sheet of the applicant should indicate the following information:
The amount which is claimed as refund, has been paid or credit note has been issued;
• The refund amount should be shown as “Duty Receivable” under the heading “Current assets”
• The consolidated journal entry, which is passed at the end of the financial year, must reflect the invoices in respect of which differential amount of duty/taxes, is being transferred to “Duty Receivable” Account.
• In the Balance sheet “Duty Receivable” under the heading “Current assets”, should be reflected, till the financial year, preceding the financial year, in which refund is sanctioned. For example, if the refund is sanctioned in the financial year 2016-17, the refund amount as “Duty receivable” should be shown upto the Balance sheet of financial year 2015-16 only.

Certification of documents, for showing compliance of the conditions of unjust enrichment principle

<table>
<thead>
<tr>
<th>As per Draft Circular</th>
<th>As per Draft CGST/SGST Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self certification of the certificates could be done by the applicant, if the refund amount is ₹ 25 lakhs or less.</td>
<td>Self declaration may be filed, instead of filing the documents or other evidences, where the refund amount is less than ₹ 5 lakhs.</td>
</tr>
<tr>
<td>In other cases, certificates would require to be certified by the Chartered accountant or cost accountant.</td>
<td>In other cases, certificate from chartered accountant is required.</td>
</tr>
</tbody>
</table>

Refund arising out of differential duty on inputs and capital goods

The principle of unjust enrichment is required to be satisfied even in case of refund of duty/tax paid on input or input services, which are used in the taxable activities. The manufacturer or service provider may not be able claim the refund, if he has already recovered the duty/tax form the recipient, in that case recipient can claim the refund of duty/tax paid by him to the manufacturer or service provider. But the recipient has to satisfy the following conditions:

a. The amount of duty/tax, in relation to which refund is claimed, has not been included in the cost;
b. The CENVAT Credit has not been claimed in relation to duty/tax amount claimed as refund;
c. If has already availed CENVAT Credit, then he will reverse the input tax credit account, by an amount equal to the refund amount and the same would be credited to “Duty receivable” account;
d. If the duty/tax amount is included in the purchases, in that case the purchase account may be credited at the year end and debit the same in the “Duty Receivable” account.
e. If the recipient reverses the CENVAT Credit in the financial year in which he claims the duty/tax amount as refund, it is sufficient to satisfy the test of principle of unjust enrichment.

Refund arising out of differential duty on final products

Discounts: The actual discount is quantified at the year end and the accounts are settled accordingly, in the given case normally transaction is settled through credit/debit note, where supplier credits the account of buyer with the amount of discount/incentives and the buyer shall debit the account of supplier in his books of account with the amount of discount/incentives received.

Finalisation of provisional assessment: The assessee may be eligible for refund on finalisation of provisional assessment. The provisions relating to provisional assessment also provided in GST in Section 44 of the CGST/SGST Act. Hence the given procedure will be helpful in GST also.

Favourable order by appellate authority: Where the tax liability is determined higher by the Department than the self assessed liability and appeal is filed against such higher determination, in that case refund may arise if the assessee receives the favourable order from Appelate authority.

Documents to be submitted with refund application

• Documents evidencing payment of duty by manufacturer or service provider;
The applicant’s certification that CENVAT credit is not availed or if availed earlier has been reversed and the duty paid is not included in the cost;

The supplier’s certification that he has not filed the refund application or refund application filed by him has been rejected on the ground of unjust enrichment, etc.

The principle of unjust enrichment does not apply in case of refund of pre-deposit

The pre-deposit requirement at the time filing appeal before First Appellate Authority or Appellate Tribunal, is also retained under GST also. As per the Draft Circular, the principle of unjust enrichment is not applicable in case of refund of pre-deposit.