



**REFUNDS, SUPPLY &
INTERPLAY WITH
SEC 73 AND 74 –
RAMIFICATIONS IN LAW**

**SUSHIL K VERMA
ADVOCATE
21ST JUNE 2025**



In GST, the taxable event is the event of a “Supply”. In ordinary language, supply means make (something needed or wanted) available to someone; to provide. Supply could be an interstate supply or an intrastate one.



The GST is levied in the form of a Central Goods and Services Tax (CGST) and a State or Union Territory Goods and Services Tax (SGST or UTGST) on all intra State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption. The value taken for the charge of the tax is determined under Section 15 of the CGST Act.

- Any Import of Services thus become liable to tax whether or not made in the course or furtherance of business.
- Besides, there is a set of activities specified in Schedule I to the CGST Act, made or agreed to be made without any consideration, that if engaged in have to be construed as being an instance of a 'supply'.
- Schedule II to the CGST Act contains a listing of activities or transactions that constitute a supply in the sense of the meaning assigned to the expression but are to be treated either as a supply of goods or supply of services to ease the matters relating to the determination of the place of supply and matters relating to the rate of tax attracted on the particular transactions.
- Furthermore, Activities or transactions specified in Schedule III to the CGST Act; or such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council are to be treated neither as a supply of goods nor a supply of services.



- **Section 16 of the CGST Act entitles every registered person to take credit of input tax charged on any supply (of goods or services or both) to him which are used or intended to be used in the course or furtherance of his business.**
- **Credit is permitted to be taken on 'capital goods', 'inputs', and on 'input services'. The entitlement to credit is subject to certain prescribed conditions and restrictions. The ITC is made available to the registered person as a credit in his electronic credit ledger. To take credit, the registered person should have a tax invoice or debit note (or any other prescribed taxpaying documents) issued by a GST registered supplier and he should also have received the goods or services or both on which the ITC is sought to be taken. Section 49 of the CGST Act deals with how the input tax credit is credited to the electronic credit ledger of the registered taxpayer.**
- **Section 16 (2) (c) & (d) also entails that before the ITC is taken by the Recipient of either goods or services or both, the tax charged in respect of such input supplies should have been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the such a supply; and that the supplier making the input supplies furnish the return under section 39.**



- In terms of the 1st, and 2nd Provisos to **Section 16(2)(c) of the CGST Act**, where the goods against an invoice are received in lots or installments, the registered person is entitled to take credit upon receipt of the last lot or installment.
- Besides, it is also stipulated that the recipient of input supplies (either goods or services or both) should pay the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis- in case, the stipulated payments are not made in this time of 180 days an amount equal to the input tax credit availed by the recipient would be added to his output tax liability of the recipient, along with interest thereon.





- The 3rd Proviso to Section 16(2) (c) of the **CGST Act** deals with the reverse charge situations and provides that the recipient of goods and services or both, is entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.
- **Section 16 (3) of the CGST Act disallows** the registered person from claiming input tax credit on the tax component of the cost of capital goods and plant and machinery that has been claimed as depreciation on under the provisions of the Income-tax Act, 1961 (43 of 1961). Section 16 (4) permits input tax credit in respect of any invoice or debit note for the supply of goods or services or both but puts a timeline within which such a credit can be taken.

- The amount of input tax credit is restricted to so much of the **input tax as is attributable to the purposes of his business**. In cases where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies under the said Acts, the amount of **credit is restricted to the input tax as can be attributed to the said taxable supplies including zero-rated supplies [Section 17(2) of the CGST Act]. The value of exempt supply can be worked out using [Section 17(3) of the CGST Act]**. Section 17(4) of the CGST Act gives two options on the manner of taking ITC, either one of which may be exercised, to a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances.





- **Section 17 (5) restricts the input tax credit from being available in respect of certain input supplies – like on certain classes of motor vehicles, vessels, and aircraft, on food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, life insurance, etc. However, some of these exclusions are not absolute and there are specific situations in which**
- **ITC can be taken on some such supplies.**
- **Section 18 of the CGST Act makes input tax credit available in respect of inputs and capital goods sent for a job-work, subject to observance of stipulated conditions.**
- **Section 20 of the CGST Act deals with the manner of distribution of credit by an “Input Service Distributor”.**
- **The framework of the input tax credit mechanism outlined above applies to all three taxes in GST – the central tax, the integrated tax, and the State Tax.**



In terms of Section 2 (5) of the IGST Act, “export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India.

An “export of services” in terms of Section 2(6) of the IGST Act means the supply of any service when -

- (i) The supplier of service is located in India;**
- (ii) The recipient of service is located outside India**
- (iii) The place of supply of service is outside India**
- (iv) The payment for such service has been received by the supplier of service in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India]; and**
- (v) The supplier of service and the recipient of service are not merely establishments of a distinct person.**

In **GST** certain establishments are treated as establishments of distinct persons where a person has -

- (i) **An establishment in India and any other establishment outside India;**
- (ii) **An establishment in a State or Union territory and any other establishment outside that State or Union territory; or**
- (iii) **An establishment in a State or Union territory and any other establishment registered within that State or Union territory.**
- The location of the supplier of service, the location of the recipient of service, and the place of supply of service are determinable in terms of Sections 2(15) and Section 2(14) of the **IGST Act**.
- In cases where the location of the supplier or location of the recipient is outside India, the place of supply of the concerned service can be determined with reference to provisions of **Section 13 of the IGST Act**.





Export of goods or services or both, and the supply of goods or services or both, to a Special Economic Zone developer or a Special Economic Zone unit - are zero-rated as per Section 16(1)(a) & (b) respectively of the IGST Act, 2017.

By zero-rating it is meant that the tax impact on the entire supply chain leading up to the particular transaction that is being 'Zero Rated' is made tax free i.e. there is no burden of tax to be borne either on the inputs leading up to the particular outward supply or on the outward supply itself. [In terms of Section 2 (83) of the CGST Act 2017, "outward supply" in relation to a taxable person, means a supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business.]

- **Zero- rating in GST implies the following: -**
- **The credit of input tax may be availed for making zero-rated supplies; notwithstanding that such supply may be an exempt supply** (note: credit eligibility still needs to be checked with reference to terms of provisions of of the **CGST Act, 2017**).
- **A registered person making zero rated supply shall be eligible to claim refund in accordance with the provisions of section 54 of the CGST Act under either of the following options, namely :-**
 - **(a) he may supply goods or services or both under bond or Letter of Undertaking, without payment of integrated tax and claim refund of unutilised input tax credit; or**
 - **(b) he may supply goods or services or both, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied.**



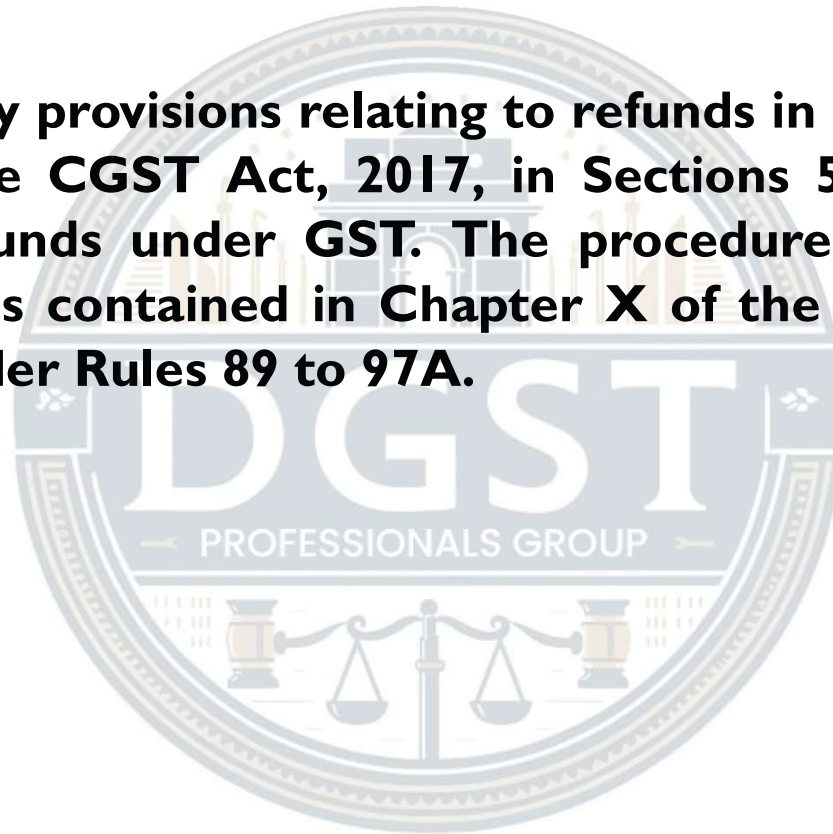


- **The Zero- Rated situations can be contrasted with the other situation where a particular supply under the GST has been exempted from the charge of the tax – in the latter situation, it is only that the outward supply or the output that is exempted from tax, but the tax borne on all the inputs that may have gone into making this outward supply is not refunded. The essence of zero-rating is thus, to make Indian goods and services competitive in the international market by ensuring that domestic taxes do not get added as a cost in exports.**
- **The objective of zero-rating of exports and supplies to SEZ/SEZ Developer is achieved through the provision contained in Section 16(3) of the IGST Act, 2017.**



- **When tax, interest, or any other amount is paid to the Government more than the liability incurred or accrued, then a refund situation arises. In terms of the explanation to Section 54 of the CGST Act, “refund” includes 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, or refund of tax on the supply of goods regarded as deemed exports, or refund of the unutilized input tax credit.**

- **Statutory provisions relating to refunds in GST Chapter XI of the CGST Act, 2017, in Sections 54 to 56 deal with refunds under GST. The procedure for claiming refunds is contained in Chapter X of the CGST Rules, 2017 under Rules 89 to 97A.**





- **GST Council Resolution on permitting refunds without matching and without excluding the amount of provisionally accepted input tax credit. Since the functionality of furnishing of FORM GSTR-2 and FORM GSTR-3 remains unimplemented, it has been decided by the GST Council to sanction refund of provisionally accepted input tax credit. However, the applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 read with sub-section (2) of section 42 of the CGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted electronically along with the refund claim**



- **GST Council Resolution on permitting refunds without matching and without excluding the amount of provisionally accepted input tax credit. Since the functionality of furnishing of FORM GSTR-2 and FORM GSTR-3 remains unimplemented, it has been decided by the GST Council to sanction refund of provisionally accepted input tax credit. However, the applicants applying for refund must give an undertaking to the effect that the amount of refund sanctioned would be paid back to the Government with interest in case it is found subsequently that the requirements of clause (c) of sub-section (2) of section 16 read with sub-section (2) of section 42 of the CGST Act have not been complied with in respect of the amount refunded. This undertaking should be submitted electronically along with the refund claim**

TYPES OF REFUNDS



(A) Refund of tax paid on supplies of goods or services or both

- a. Refund of tax paid on export of good with payment of tax
- b. Refund of tax paid on export of services with payment of tax
- c. Refund of tax paid on supplies made to SEZ Unit/SEZ Developer with payment of tax
- d. Refund to the supplier of tax paid on deemed export supplies.
- e. Refund to the recipient of tax paid on deemed export supplies.

(B) Refund of unutilized ITC

- a. Refund of unutilized input tax credit (ITC) on account of exports without payment of tax.
- b. Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax.
- c. Refund of unutilized ITC on account of accumulation due to an inverted tax structure.

TYPES OF REFUNDS



(C) Refund of balance in electronic cash ledger

- (a) Refund of advance tax deposited by Casual Taxpayer or Non-resident Taxpayer**
- (b) Refund of tax paid on supplies received by Embassies, Consulates, Agencies of UNO, etc.**

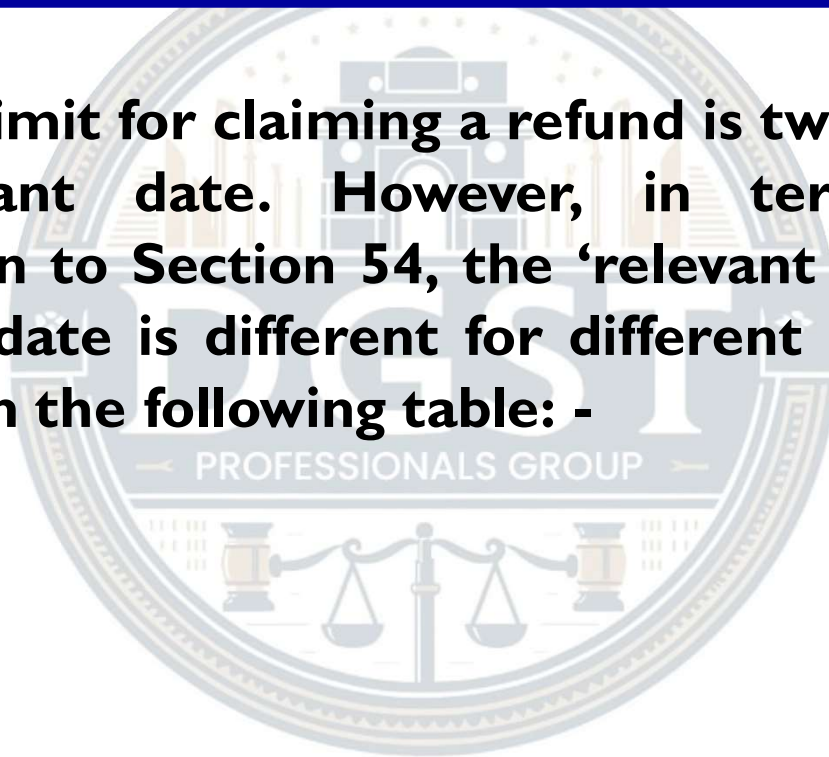
(D) Others

- (a) Refund of excess payment of tax.**
- (b) Refund of tax paid on an intra-State supply which is subsequently held to be inter-State supply and vice versa. SECTION 77**
- (c) Refund on account of assessment/provisional assessment/appeal/any other order.**
- (d) Refund on account of “any other” ground or reason.**

TIME LIMITS TO CLAIM A REFUND IN GST



- **The time limit for claiming a refund is two years from the relevant date. However, in terms of the Explanation to Section 54, the ‘relevant date’ or the reference date is different for different situations as indicated in the following table: -**



RELEVANT DATE – IMPORTANT ONES



Goods exported out of India where the refund is in respect of the goods themselves or with respect of the inputs or input services used in such goods:

A. (a) Goods are exported by sea or air

The date on which the ship or aircraft in which such good are loaded ,leaves India.

(b) Goods exported by land

The date on which such goods pass the frontier

(c) Goods exported by post to a place outside India

Date of despatch of goods by the Post Office

RELEVANT DATE – IMPORTANT ONES



Goods exported out of India where the refund is in respect of the goods themselves or with respect of the inputs or input services used in such goods:

A. (a) Goods are exported by sea or air

The date on which the ship or aircraft in which such good are loaded ,leaves India.

(b) Goods exported by land

The date on which such goods pass the frontier

(c) Goods exported by post to a place outside India

Date of despatch of goods by the Post Office

RELEVANT DATE – IMPORTANT ONES



(d) Goods supplied as deemed exports

- The date on which the return relating to such deemed exports is furnished.



RELEVANT DATE – IMPORTANT ONES



Export of services where the refund is in respect of the services themselves or in respect of the inputs or input services used in such services:

a) Where the supply of services has been completed before the receipt of payment

Date of receipt of payment in convertible foreign exchange

b) Where the payment for the services has been received in advance before the date of issue of invoice

Date of issue of invoice

RELEVANT DATE – IMPORTANT ONES



Export of services where the refund is in respect of the services themselves or in respect of the inputs or input services used in such services:

a) Where the supply of services has been completed before the receipt of payment

Date of receipt of payment in convertible foreign exchange

b) Where the payment for the services has been received in advance before the date of issue of invoice

Date of issue of invoice

RELEVANT DATE – IMPORTANT ONES



- **Refund of unutilized Input Tax credit**

The end of the financial year in which such claim for refund arises

- **Refund of tax paid provisionally**

Date of adjustment of tax after the final assessment

- **Refund claimed by a person other than the supplier**

Date of receipt of goods or services or both by such person

- **In any other case**

Date of payment of tax

PLEASE NOTE CAREFULLY



- A refund application filed after correction of deficiency is treated as a fresh refund application, and such a rectified refund application, submitted after correction of deficiencies, will also have to be submitted within 2 years of the relevant date as defined in the explanation after sub-section (14) of section 54 of the CGST Act.

THIS REV ISSUE IS ILLEGAL... THE RECTIFIED APPLICATION WILL RELATE BACK AND NO FRESH LIMITAION STARTS.

EXPORTS REFUND ON PAYMENT OF IGST



- **In case an exporter makes supplies of goods out of India on payment of integrated tax, the refund process is governed by Rule 96 of the GST Rules. The refund in such cases shall be processed by the system designated by the Customs Department. This does not apply to the export of services out of India. In all other cases, the refund application shall be processed by the proper officers under GST from the Centre or the State Tax Administration.**

REFUND OF IGST PAID ON EXPORT OF GOODS



- As per Rule 96(I) of the CGST Rules, 2017, the shipping bill filed by an exporter of goods shall be deemed to be an application for refund of IGST paid on the goods exported out of India.

Such an application is deemed to have been filed only when:

- 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
- The applicant has furnished a valid return in FORM GSTR-3 or FORM GSTR-3B, as the case may be.
- The term valid return means a return furnished under section 39(I) of the GST Act, 2017 on which self-assessed tax has been paid in full.

FILING OF EGM



- **Filing of a correct EGM is a must for treating the shipping bill or bill of export as a refund claim.**
- **The details of the relevant export invoices contained in FORM GSTR-I are transmitted electronically by the GST portal to the Customs system and the said system, in turn, transmits back to the GST portal a confirmation that the goods covered by the said invoices have been exported out of India.**
- **In shipping, EGM stands for Export General Manifest. It is a crucial document in international trade, filed by the shipping carrier or their agent with customs authorities to validate export transactions. The EGM essentially serves as a record of goods loaded onto a vessel or aircraft for export, confirming that the goods have left the country.**

FILING OF 3 B RETURNS PRE CONDITION



- **Filing of a valid return in GSTR 3B is another pre-condition for considering the shipping bill/bill of export as the claim for refund. Upon receipt of information regarding furnishing of a valid return in FORM GSTR-3B from the common portal the Customs System, processes the claim for refund and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export is electronically credited to the bank account of the applicant mentioned in the taxpayer exporter's registration particulars. Shipping Bill formats (both manual/ electronic) have been modified to make them congruent with the requirements of the IGST law.**

RETURNS....



- In cases where the exporter has filed the **GSTR 3B** and the information furnished by the exporter in the returns **GSTR I** and **GSTR 3B** matches with the details filed by them in the **Shipping Bills**, the refunds are disbursed to the bank account of the exporter.
- Remember to file your **GSTR 3B** and the **GSTR I** details in time; ensure that the details entered in these returns concerning what has been claimed as — PROFESSIONALS GROUP —
- Exports matches with the details declared in the **Shipping Bills**- this will ensure that there are no unnecessary hitches in the clearance of your claims for refunds by the **Customs Authority** concerned.

ICES – A REFUND MODEL



- **GST Refund module for exports is operational in ICES since 10.10.2017. The procedure for refund of IGST paid on export of goods under Rule 96 of CGST Rules, 2017 for all EDI locations, was provided vide instruction 15/2017- Customs, dated 9-10-2017 issued from F. No. 450/119/2017-Cus IV. The IGST refund module has been designed in line with the Rule 96 of the CGST Rules and has an in built mechanism to automatically grant refund after validating the Shipping Bill data with available in ICES against the GST Returns data transmitted by GSTN.**

SOME DISCREPANCIES THAT ARE NOTED



- **Number of Container Mismatch**
- **LEO date greater than Sailing Date**
- **Nature of Cargo Mismatch (Number of Packets Mismatch)**
- **Procedure for correcting errors in Shipping Bill filed at Gateway Port**
- **Mismatches between the Truck/Train Summary and Gateway EGM**

RESTRICTIONS ON THE CLAIM OF REFUND OF IGST PAID ON EXPORT OF GOODS AND SERVICES



- If the Exporters having already availed of specified benefits may not be eligible to claim a refund of the IGST relating to exports – these are dealt with in Sub-rule (10) of rule 96 of the CGST Rules.
- As such, the refund of IGST paid on exported goods and services is not allowed if the goods are procured from a supplier who has availed the benefit of the following notifications: -
- (i) Notification no. 40/2017-Central Tax (Rate) or Notification No 41/2017-Integrated Tax (Rate) both dated 23rd October 2017: - This notification prescribes a CGST rate of 0.05% / IGST 0.1% if goods are supplied by a registered supplier to a registered recipient for export (merchant exporter) subject to certain conditions.
- (ii) Notification no. 48/2017-Central Tax dated 18th October 2017:- This
- notification notifies supplies to be considered as deemed exports.

EPCG SCHEMES AND REFUND



- However, exporters who have used the EPCG scheme to bring in Capital Goods, either through import in terms of notification No. 79/2017-Customs dated 13.10. 2017 or through domestic procurement in terms of notification No. 48/2017-Central Tax, dated 18.10.2017, continue to be eligible to claim a refund of Integrated tax paid on exports and would not be hit by the restrictions provided in sub-rule (10) of rule 96 of the **CGST Rules**.

REFUND RESTRICTIONS..

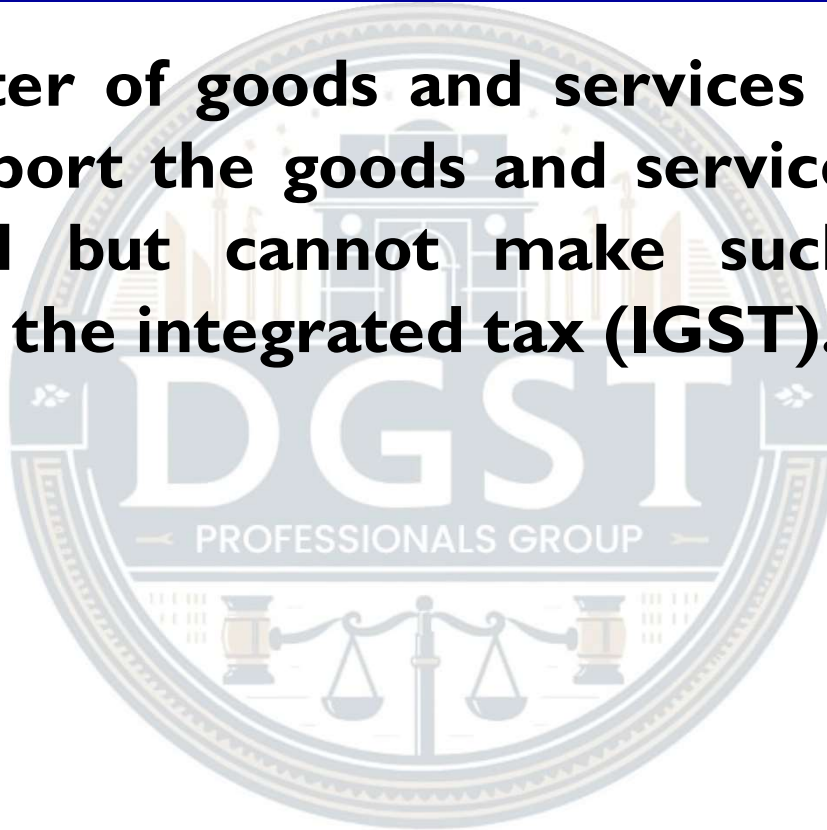


- Further, the refund of IGST paid on exported goods and services is also not allowed if the exporter has availed the benefit of the following Notifications:
- a) Notification no. 78/2017-Customs dated 13th October 2017:- This notification provides an exemption to IGST and compensation cess levied on goods imported by EOU.
- b) Notification no. 79/2017-Customs dated 13th October 2017:- This notification provides IGST exemption and Compensation Cess exemption to goods imported against advance authorization.

LUT



- **The exporter of goods and services in such cases can still export the goods and services only under LUT/ bond but cannot make such export on payment of the integrated tax (IGST).**



RULE 96(10) ... ;LATEST GUJ HC JUDGMENT



- The explanation to Rule 96(10) clarifies that, the benefit of the notifications mentioned above shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications. This makes it clear that the exporter can import goods by availing the Basic Customs Duty exemption under the above notifications but on payment of IGST. In such a case, the provisions of Rule 96(10) will not be attracted, and the exporter can export on payment of IGST.
- In any other case, the exporter of goods and services can export the goods and services only under LUT/ bond and cannot export on payment of the integrated tax (IGST).



NO REFUND OF IGST PAID ON EXPORTS DUE SUPPLIES RECEIVED ON WHICH THE FOLLOWING BENEFITS HAVE BEEN RECEIVED:

- **I. Notification No. 48/2017- Central Tax, dated the 18th October, 2017, except so far it relates to receipt of capital Supply of goods by a registered person against Export Promotion Capital Goods Scheme**
- **Supply of goods by a registered person against Advance Authorisation,**
- **Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation**
- **Supply of goods by a registered person to Export Oriented Unit**
- **Supply of gold by a bank or Public Sector Undertaking specified in the 56notification No. 50/2017-Customs, dated the 30th June, 2017 (as amended) against Advance Authorisation.**
- **Notification 48/2017- CT. – Seeks to notify the above supplies as deemed exports under section 147 of the CGST Act, 2017.**

NOTIFICATIONS – RELEVANCE?



- **Notification 41/2017-Integrated Tax (Rate), dt. 23- 10-2017 - Seeks to prescribe Integrated Tax rate of 0.1% on inter-State supply of taxable goods by a registered supplier to a registered recipient for export subject to specified conditions.**
- **Notification 40/2017-Central Tax (Rate) ,dt. 23-10- 2017 - Seeks to prescribe Central Tax rate of 0.05% on intra-State supply of taxable goods by a registered supplier to a registered recipient for export subject to specified conditions.**

The persons claiming refund of integrated tax paid on exports of goods or services should not have availed the benefit under the following:



- **Notification No. 78/2017- Customs, dated the 13th October, 2017**
- **Seeks to exempt goods imported by EOUs from integrated tax and compensation cess by amending Notification No. 52/2003-Customs, dated 31st March, 2003**
- **Notification No. 79/2017-Customs, dated the 13th October, 2017 - Seek to amend various Customs exemption notifications to exempt Integrated Tax/Cess on import of goods under AA/EPCG schemes – the notification amended by this are the following: 16/2015-Customs, dated 1st April, 2015; 18/2015-Customs, dated 1st April, 2015; 20/2015-Customs, dated 1st April, 2015; 21/2015-Customs, dated 1st April 2015; 22/2015-Customs, dated 1st April, 2015 & 45/2016-Customs, dated 13th August, 2016**

APPLYING AND PROCESSING OF REFUNDS



- Applying for a refund on the **GST Portal**
- A refund application in **FORM GST RFD-01** shall be filled on the common portal by an applicant seeking refund under any of the authorised reasons (given earlier)
- **IMPORTANT**
- The statements/declarations/undertakings which are part of **FORM GST RFD-01** itself, and also other documents/invoices which are to be uploaded shall be **AS PRESCRIBED BY CIRCULAR** and required to be provided by the applicant for processing of the refund claim.
- No other document needs to be provided by the applicant at the stage of filing of the refund application (**FILE COVERING LETTER**)



Documents/Statements/Undertakings/Declarations to be made along with the refund application being filed on the GST Portal

- **A. Refund of unutilized ITC on account of exports without payment of tax**
- **I) Declaration/Statement/Undertaking/Certificates to be filled online**
 - **a) Declaration under the second and third proviso to section 54(3)(drawback etc) (Proviso)**
 - **b) Undertaking in relation to sections 16(2)(c) and section 42(2) SUPPLIER 3B RETURN – TAX ACTUALLY PAID**
 - **c) Statement 3 under rule 89(2)(b) (SHIPPING BILL DETAILS ETC FOR EXPORTS) and rule 89(2)(c)(BRCS)**
 - **d) Statement 3A under rule 89(4)**



Supporting documents to be additionally uploaded:

- a) **Copy of GSTR-2A** of the relevant period
- b) **Statement of invoices** in prescribed format **Annexure B**
- c) **Self-certified copies of invoices** entered in **Annexure-B** whose details are not found in **GSTR-2A** of the relevant period
- d) **BRC/FIRC** in case of export of services and shipping bill (only in case of exports made through non-EDI ports) in case of goods



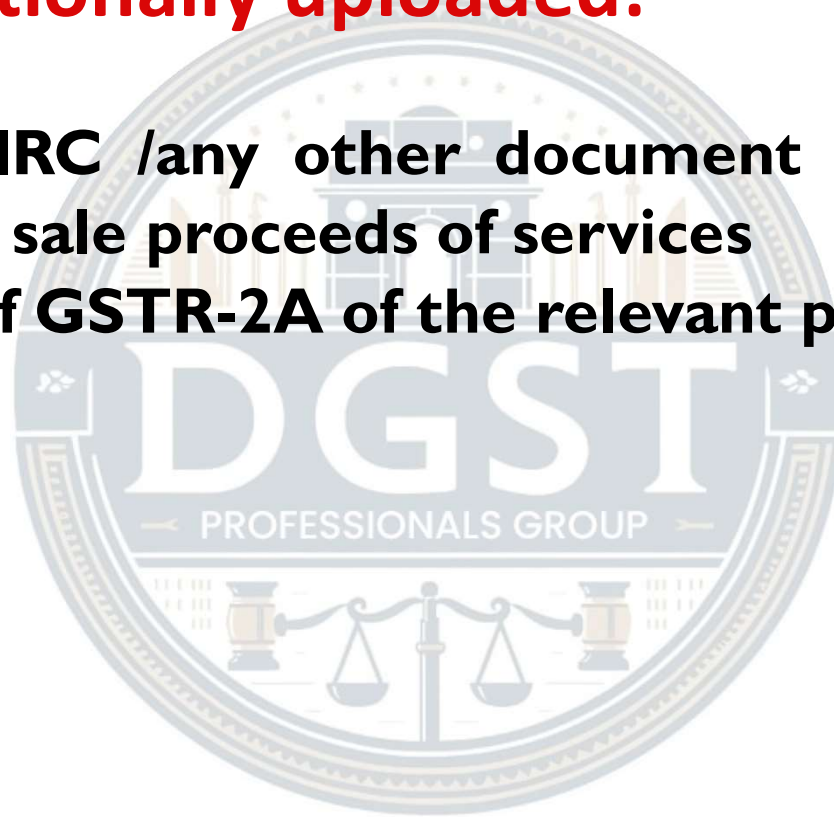
Refund of tax paid on export of services made with payment of TAX

- **Declaration/Statement/Undertaking/ Certificates to be filled online**
- **a) Declaration under second and third proviso to section 54(3)**
- **b) Undertaking in relation to sections 16(2)(c) and section 42(2)**
- **c) Statement 2 under rule 89(2)(c). (BRC)**

Supporting documents to be additionally uploaded:



- a) **BRC/FIRC** /any other document indicating the receipt of sale proceeds of services
- b) **Copy of GSTR-2A** of the relevant period



Refund of tax **paid on export of services** made with payment of TAX



SUPPORTING DOCUMENTS ETC.

- a) **BRC/FIRC /any other document indicating the receipt of sale proceeds of services**
- b) **Copy of GSTR-2A of the relevant period**
- **Statement of invoices**
- **(Annexure-B)**
- c) **Self-certified copies of invoices entered in Annexure-A whose details are not found in GSTR-2A of the relevant period**
- d) **Self-declaration regarding non- prosecution under sub- rule (I) of rule 91 of the CGST Rules for availing provisional refund.**

Refund of **unutilized ITC on account of Supplies made to SEZ** units/developer without payment of tax



DECLARATIONS CERTIFICATES ETC

- a) Declaration under third proviso to section 54(3)
- b) Statement 5 under rule 89(2)(d) and rule 89(2)(e)
- c) Statement 5A under rule 89(4)
- d) Declaration under rule 89(2)(f)
- e) Undertaking in relation to sections 16(2)(c) and section 42(2)
- f) Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise) **proviso to 89(l))**

Refund of tax **paid on export of services** made with payment of TAX



SUPPORTING DOCUMENTS ETC.

- a) **BRC/FIRC /any other document indicating the receipt of sale proceeds of services**
- b) **Copy of GSTR-2A of the relevant period**
- **Statement of invoices**
- **(Annexure-B)**
- c) **Self-certified copies of invoices entered in Annexure-A whose details are not found in GSTR-2A of the relevant period**
- d) **Self-declaration regarding non- prosecution under sub- rule (I) of rule 91 of the CGST Rules for availing provisional refund.**

DOCUMENTS SUPPORTED



- a) Copy of GSTR-2A of the relevant period**
- b) Statement of invoices (Annexure-B)**
- c) Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period**
- d) Endorsement(s) from the specified officer of the SEZ regarding receipt of goods/services for authorized operations under second proviso to rule 89(I)**

Refund of taxpaid on supplies made to SEZ units/developer with payment of tax



Declarations etc.

- a) **Declaration under second and third proviso to section 54(3)**
- b) **Declaration under rule 89(2)(f) (Tax Not collected)**
- c) **Statement 4 under rule 89(2)(d) and rule 89(2)(e)**
- d) **Undertaking in relation to sections 16(2)(c) and section 42(2)**
- e) **Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise**

Refund of taxpaid on supplies made to SEZ units/developer with payment of tax



Supporting documents etc.

- **a) Endorsement(s) from the specified officer of the SEZ regarding receipt of goods/services for authorized operations under second proviso to rule 89(I)**
- **b) Self-certified copies of invoices entered in Annexure-A whose details are not found in GSTR-2A of the relevant period**
- **c) Self-declaration regarding non- prosecution under sub- rule (I) of rule 91 of the CGST Rules for availing provisional refund) no offence etc)**

Refund of ITC unutilized on account of accumulation due to inverted tax structure



- **DECLARATIONS ETC**
- a) Declaration under second and third proviso to section 54(3) (2L)
- b) Declaration under section 54(3)(ii) (RATE OF OUTWARD LESS)
- c) Undertaking in relation to sections 16(2)(c) and section 42(2)
- d) Statement I under rule 89(5). (formula calculation)
- e) Statement IA under rule 89(2)(h)
- f) Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) that the amount claimed as refund has not been passed on to any other person.

Refund of ITC unutilized on account of accumulation due to inverted tax structure



DOCUMENTS

- a) Copy of GSTR-2A of the relevant period**
- b) Statement of invoices (Annexure-B)**
- c) Self-certified copies of invoices entered in Annexure-B whose details are not found in GSTR-2A of the relevant period**

Refund to supplier of tax paid on deemed export supplies



DECLARATIONS ETC

- a) Statement 5(B) under rule 89(2)(g)**
- b) Declaration under rule 89(2)(g)**
- c) Undertaking in relation to sections 16(2)(c) and section 42(2)**
- d) Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) that the amount claimed as refund has not been passed on to any other person.**

Refund to supplier of tax paid on deemed export supplies



- **Documents required under Notification No. 49/2017-Central Tax dated 18.10.2017 and Circular No. 14/14/2017-GST dated 06.11.2017**



Refund of excess payment of tax



DECLARATIONS – NO DOCUMENTS REQUIRED

- a) **Statement 7 under rule 89(2)(k) (statement showing excess tax)**
- b) **Undertaking in relation to sections 16(2)(c) and section 42(2)**
- c) **Self-declaration under rule 89(2)(l) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) that the amount claimed as refund has not been passed on to any other person.**

PROCESSING OF APPLICATION BY REVENUE OFFICER



- Based on scrutiny of the refund application filed by the applicant, if the refund application is found to be complete in all aspects, Acknowledgement in Form GST RFD-02 will be issued by the Refund Processing Officer, within 15 days from the date of filing of the refund application.
- Based on scrutiny of the refund application and attachments filed by the applicant, in case, any deficiencies are noticed in refund application, the Deficiency Memo will be issued in Form GST RFD-03 on the refund application by the Refund Processing Officer. In case of issuance of Deficiency Memo in Form GST RFD-03, there would be auto re-credit of refund claimed amount in Electronic Cash/ Credit Ledger, if the ledger has been debited at the time of filing refund application. **In this case, the applicant needs to file a fresh refund application for the same period again, if needed, after rectification of the deficiencies mentioned in the deficiency memo.**

PROCESSING OF APPLICATION BY REVENUE OFFICER CONTINUED...



- Refund Processing Officer can issue an online notice for rejection of application for refund or recovery of erroneously granted refund for seeking any clarification in Form GST RFD-08 if required.
- The applicant is required to furnish a reply to the notice (issued in Form GST RFD-08) in Form GST RFD-09 online on GST Portal, **within 15 days of issuance of notice.**

PROVISIONAL REFUND



- Proper Officer **may** issue Provisional Refund Order in Form GST RFD-04 within 7 days from the date of acknowledgment up to 90% of the refund claimed amount, if the applicant is eligible to get a provisional refund. Refund
- **Processing Officer can issue Provisional Order in Form GST RFD-04 in following cases:**
 - Refund in case of export of services with payment of tax
 - Refund of accumulated ITC on account of export of goods/services **under Bond/LUT without payment of integrated tax.**
 - Supplies made to SEZ Unit/SEZ Developer with payment of Tax
 - Supplies made to SEZ Unit /SEZ Developer without payment of Tax
- **Refund Processing Officer will issue a Refund Sanction/ Rejection Order in Form GST RFD-06.**
- C.B.I. & C. Circular No. 104/23/2019-GST, dated 28-6-2019- read

THE TIME LIMIT FOR PROCESSING REFUND CLAIMS

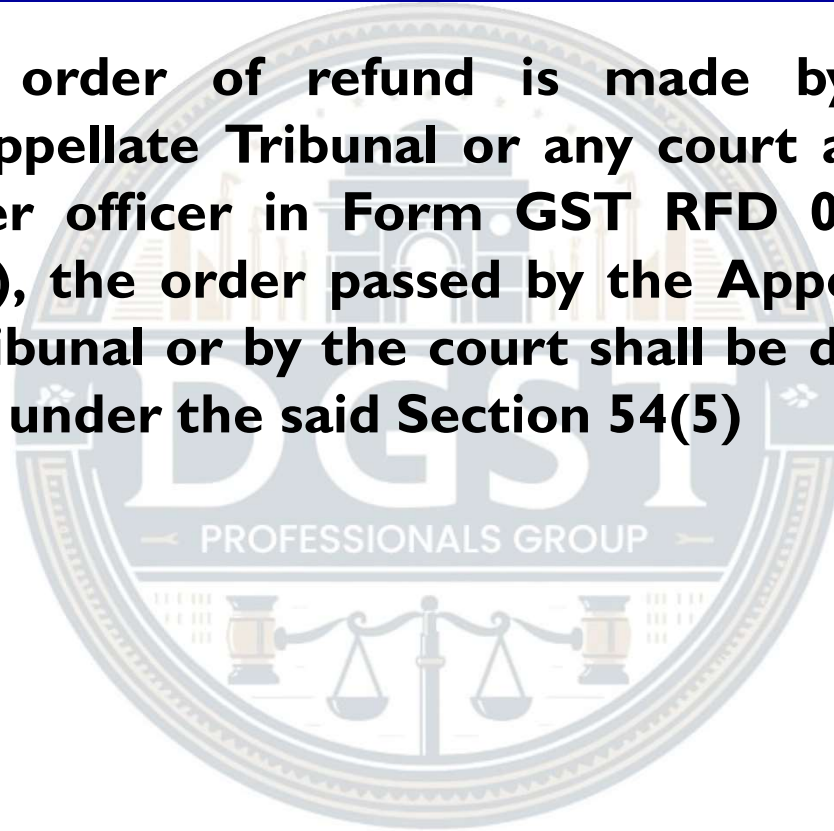


- The time limit for sanction of a refund is sixty days from the date of receipt **of application which is complete in all respects**. (Section 54(7) of the **CGST Act, 2017** refers)
- Explain date of application vis a vis rectification – for section 56
- In terms of Section 56 of the **CGST Act**, if any tax ordered to be refunded is not refunded within 60 days of the date of receipt of the application, interest at the rate of 6 percent (notified vide notification No. 13/2017-Central Tax dated 28.06.2017) on the refund amount starting from the date immediately after the expiry of sixty days from the date of receipt of application (ARN) till the date of refund of such tax shall have to be paid to the applicant.

IMPORTANT ISSUE



- **Where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer in Form GST RFD 06 passed under Section 54(5), the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said Section 54(5)**



DEFICIENCY MEMO - IMPLICATIONS



- Where deficiencies are noticed in the application for the refund, a deficiency memo in Form **GST RFD-03** will be issued within 15 days starting from the date of generation of **ARN** (Refer Rule 90(3) of the **CGST Rules**)
- Once an acknowledgment has been issued in relation to a refund application, no deficiency memo, on any grounds, maybe subsequently issued for the said application.
- After a deficiency memo has been issued, the refund application would not be further processed and a fresh application would have to be filed.
- The applicant is required to rectify the deficiencies highlighted in deficiency memo and file fresh refund application electronically in **FORM GST RFD-01** again for the same period and this application would have a new and distinct
- **ARN. JIAN INTERNATIONAL CASE OF DHC – EXPLAIN – DEF MEMO**

DEFICIENCY MEMO – IMPLICATIONS CONTINUED...



- **Any amount of input tax credit/cash debited from electronic credit/ cash ledger would be re-credited automatically once the deficiency memo has been issued.**
- **Once an application has been submitted afresh, pursuant to a deficiency memo, the proper officer will not serve another deficiency memo with respect to the application for the same period, unless the deficiencies pointed out in the original deficiency memo remain un-rectified, either wholly or partly, or any other substantive deficiency is noticed subsequently.**

PROVISIONAL REFUND



- **Grant of Provisional refund**
- To ameliorate **any short-term hardships to the exporters**, the refunds are released on a provisional basis to the extent of **90%** even before complete scrutiny of application and related records. Provisional refund is granted in terms of **Section 54 (6) of the CGST Act**.
- Provisional refund is applicable only in respect of refund claims on account of zero-rate supply of goods and services made by registered persons.
- **Zero-rated supplies include:**
 - **Export of Goods or Services**
 - **Supplies made to Special Economic Zone (SEZ) units and Developers**

PROVISIONAL REFUND CONTINUED...

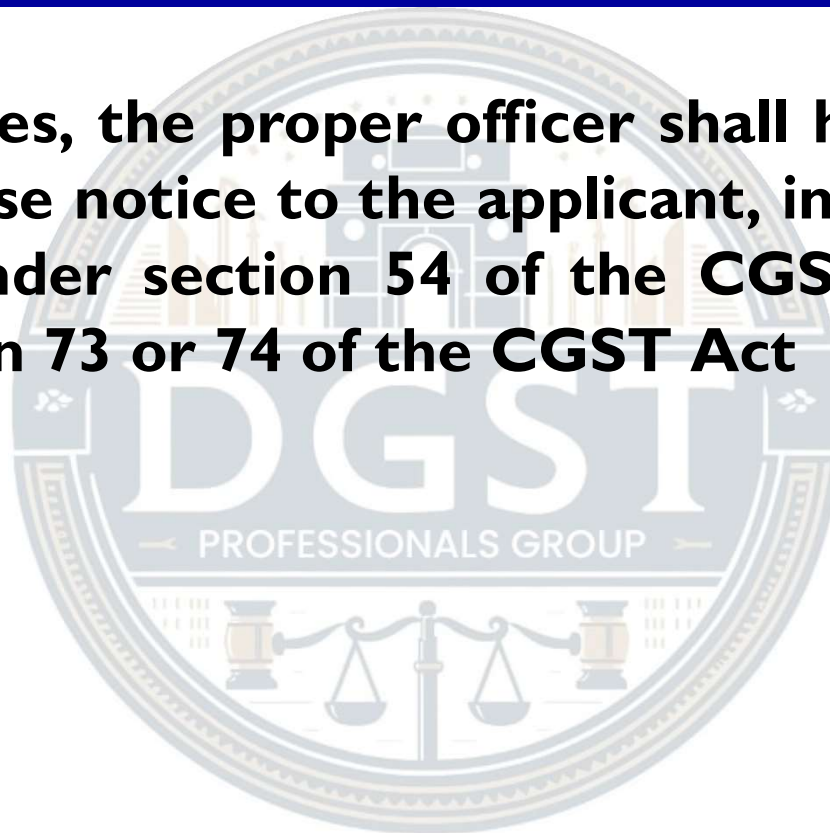


- The proper officer, after scrutiny of the refund claim and the evidence submitted and on being satisfied that the amount claimed as a refund on zero- rated supplies is due to the applicant, is to make an order in **FORM GST RFD- 04**, sanctioning the amount of refund due to the said applicant on a provisional basis within a period of seven days from the date of the acknowledgment issued in Form GST RFD-02.
- **No adjustment or withholding of refund is permitted in respect of the amount of refund which has been provisionally sanctioned. In cases where there is an outstanding recoverable amount due from the applicant, the proper officer, instead of granting a refund on a provisional basis, may process and sanction refund on the final basis at the earliest and recover the amount from the amount so sanctioned.**

FINAL REFUND LESS THAN PROVISIONAL REFUND?



- In such cases, the proper officer shall have to issue a show-cause notice to the applicant, in **FORM GST RFD-08**, under section 54 of the **CGST Act**, read with section 73 or 74 of the **CGST Act**



Should the refund of accumulated ITC on import documents, ISD invoices and RCM invoices be rejected as they are not reflected in the Form GSTR-2A of the applicant?



- Before the issuance of Circular No. 135/05/2020GST dated 31st March, 2020.
- However, vide Circular No.135/05/2020 – GST dated the 31st March, 2020, the refund related to **these missing invoices has been restricted**.
- Now, the refund of accumulated ITC shall be restricted to the ITC available on those invoices, the details of which are uploaded by the supplier in FORM GSTR-I and are reflected in the FORM GSTR-2A of the applicant.
- The treatment of refund of such ITC relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) will continue to be same as it was before the issuance of Circular No. 135/05/2020 GST dated 31st March, 2020.

Scrutiny of Refund application in respect of zero-rated supplies without payment of tax



- In case of refund claim on account of export of goods without payment of tax, the Shipping bill details shall be checked by the proper officer through ICEGATE SITE (www.icegate.gov.in) wherein the officer would be able to check details of EGM and shipping bill by keying in port name, Shipping bill number, and date. It is advised that while processing refund claims, the information contained in Table 9 of FORM GSTR-I of the relevant tax period, as well as that of the subsequent tax periods, should also be taken into cognizance, wherever applicable. In this regard, Circular No. 26/26/2017–GST dated 29.12.2017 may be referred, wherein the procedure for rectification of errors made while filing the returns in FORM GSTR-3B has been provided.
- Therefore, in case of discrepancies between the data furnished by the taxpayer in FORM GSTR-3B and Form GSTR-I, the proper officer shall refer to the said Circular and process the refund application accordingly.

No refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty.



- **The third proviso to sub-section (3) of section 54 of the CGST Act states that no refund of the input tax credit shall be allowed in cases where the supplier of goods or services or both avails of drawback in respect of Central tax.**
- **However, if a supplier avails of drawback in respect of duties rebated under the Customs and Central Excise Duties Drawback Rules, 2017, he shall be eligible for a refund of unutilized input tax credit of Central tax/ State tax/ Union Territory tax / Integrated tax/ Compensation cess.**
- **Refund of eligible credit on account of State tax shall be available if the supplier of goods or services or both has availed of drawback in respect of Central tax.**

Recovery of refund of unutilised input tax credit or of integrated tax paid on export of goods where export proceeds not realized



- Rule 96B of the CGST Rules (inserted with effect from 23.03.2020 vide Notification No 16/2020 CT dt 23.03.2020) provides that where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, **the person to whom the refund has been made shall deposit the amount so refunded**, to the extent of non-realisation of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, **along with interest under section 50.**

Recovery of refund of unutilised input tax credit or of integrated tax paid on export of goods where export proceeds not realized



- **However, where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.**

Recovery of refund of unutilised input tax credit or of integrated tax paid on export of goods where export proceeds not realized



- **Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realisation within a period of three months from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.**
- **An undertaking to the above effect has been inserted in the Form GST RFD-01.**

BRC PROOF AND EXPORT OF SERVICES



- **The realization of consideration in convertible foreign exchange, or in Indian rupees wherever permitted by Reserve Bank of India, is one of the conditions for export of services. In case of export of goods, realization of consideration is not a pre-condition. In rule 89 (2) of the CGST Rules, a statement containing the number and date of invoices and the relevant Bank Realization Certificates (BRC) or Foreign Inward Remittance Certificates (FIRC) is required in case of export of services**

EXEMPT SUPPLIES AND ZERO RATING AND LUT ISSUES



- **As per section 16(2) of the IGST Act, credit of input tax may be availed for making zero-rated supplies; notwithstanding that such supply is an exempt supply. In terms of section 2 (47) of the CGST Act, exempt supply includes the non-taxable supply. Further, as per section 16(3) of the IGST Act, a registered person making zero rated supply shall be eligible to claim a refund when he either makes a supply of goods or services or both under bond or letter of undertaking (LUT) or makes such supply on payment of Integrated tax.**

REFUND OF TAX PAID ON DEEMED EXPORTS



- **Certain supplies of goods have been notified as deemed exports vide notification No. 48/2017-Central Tax dated 18.10.2017 under section 147 of the CGST Act. Further, the third proviso to rule 89(I) of the CGST Rules allows either the recipient or the supplier to apply for refund of tax paid on such deemed export supplies.**
- **In case such refund is sought by the supplier of deemed export supplies, the documentary evidences as specified in notification No. 49/2017 Central Tax dated 18.10.2017 are also required to be furnished which includes the following:**

DEEEMD EXPORT DOCUMENTS...



- a) Acknowledgment by the jurisdictional Tax officer of the Advance Authorisation holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said Advance Authorisation or Export Promotion Capital Goods Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.**
- b) An undertaking that the recipient of deemed export supplies shall not claim the refund in respect of such supplies and**
- c) An undertaking that the recipient of deemed export shall not avail any input tax credit on such supplies.**

DEEMED EXPORTS



- **Similarly, in case the refund is filed by the recipient of deemed export supplies, an undertaking shall have to be furnished by him stating that refund has been claimed only for those invoices which have been detailed in statement 5B for the tax period for which refund is being claimed and that he has not availed input tax credit on such invoices. The recipient shall also be required to declare that the supplier has not claimed a refund with respect to the said supplies.**

SOME ITC IMP ISSUES---



- **There is no distinction between intermediate goods or services and final goods or services under GST. Inputs have been clearly defined to include any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business. Since coal is an input used in the production of aluminium, albeit indirectly through the captive generation of electricity, which is directly connected with the business of the registered person, input tax credit in relation to the same cannot be denied.**

ITC REVERSED AND REFUND - IMPLICATIONS



- **ITC which is reversed cannot be held to have been 'availed' in the relevant period. Therefore, the same cannot be part of refund of unutilized ITC on account of zero-rated supplies. Moreover, the reversed ITC has been accounted as a cost which would have reduced the income tax liability of the applicant. Therefore, the same amount cannot, at the same time, be refunded to him/her in the ratio of export turnover to total turnover. However, if the said reversed amount is again availed in a later tax period, subject to the restriction under section 16(4) of the CGST Act, it can be refunded in the ratio of export turnover to total turnover in that tax period in the same manner as detailed in the section on refunds of unutilized ITC above. This is subject to the restriction that the accounting entry showing the said ITC as cost is also reversed.**

REFUND OF TAX PAID UNDER THE WRONG HEAD



- The provisions of **CGST/SGST Act**, enables a taxpayer to claim for a refund of the tax paid for the intra-state supply which is consequently held to be inter-state supply and vice versa. Refund can be claimed on the **GST Portal** using refund option as **“Refund on tax paid on an Intra state supply which is subsequently held to be inter-state supply and vice versa”**, if an order is issued by the tax officer against which the refund is arising due to change in PoS (place of supply) of a particular transaction.
- In such cases, while making the appropriate payment of tax, interest will not be charged and the refund claim of the wrong tax paid is provided. Accordingly, **Rule 89(IA)** has been inserted in **CGST Rules, 2017** vide Notification No. 35/2021-Central Tax dated 24.09.2021 to prescribe the manner and time period for filing such claim. Further, a Circular No. 162/18/2021-GST dated 25.09.2021 has been issued clarifying the issues pertaining to refund of tax paid in wrong head under **Section 77 of CGST Act, 2017** and **Section 19 of IGST Act, 2017**.

REFUNDS TO CASUAL/NON- RESIDENT TAXABLE PERSONS



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

POWER WITH THE COMMISSIONER TO WITHHOLD REFUND IN CERTAIN CASES: SEC 54(11)



- **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 GST 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 in Part A of Form GST RFD-07 till such time as he may determine. Further, once the reasons for withholding refund no more exist, such withheld refunds may be released by passing an order in Part-B of Form GST RFD-07.**



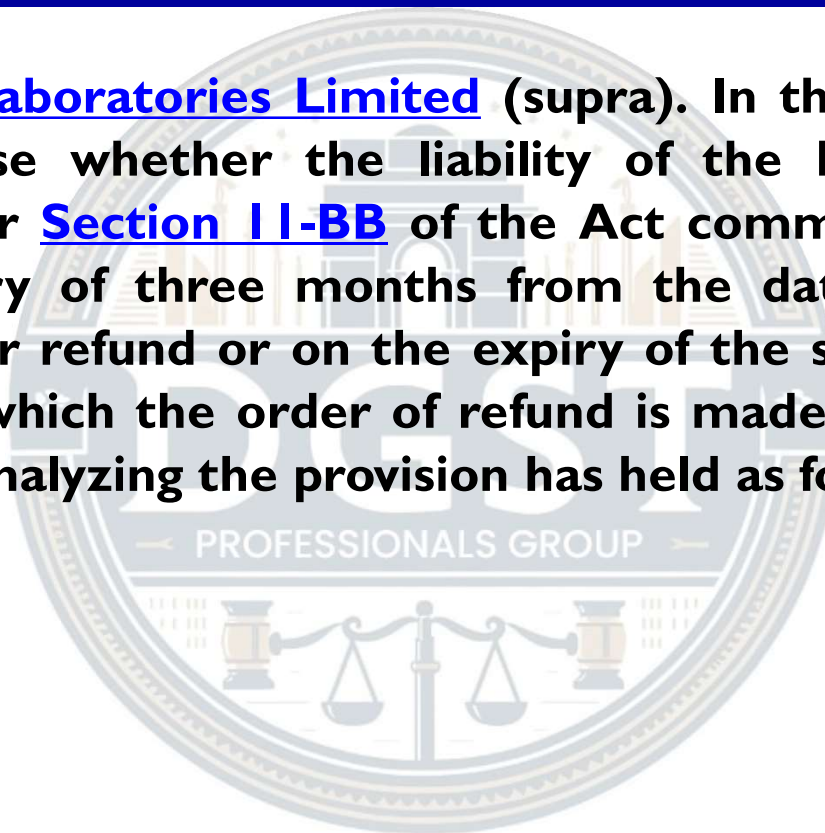
REFUNDS AND RAMIFICATIONS UNDER GST- IMP JUDGMENTS



UNION OF INDIA VS M/S. HAMDARD (WAQF) LABORATORIES ON 25 FEBRUARY, 2016



- In [Ranbaxy Laboratories Limited](#) (supra). In the said case, the question arose whether the liability of the Revenue to pay interest under [Section 11-BB](#) of the Act commences from the date of expiry of three months from the date of receipt of application for refund or on the expiry of the said period from the date on which the order of refund is made. The two-Judge Bench after analyzing the provision has held as follows:-



UNION OF INDIA VS M/S. HAMDARD (WAQF) LABORATORIES ON 25 FEBRUARY, 2016 CONTINUED...



- “12. It is manifest from the afore-extracted provisions that [Section 11BB](#) of the Act comes into play only after an order for refund has been made under [Section 11B](#) of the Act. [Section 11BB](#) of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under sub-section (1) of [Section 11B](#) of the Act, then the applicant shall be paid interest at such rate, as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of the application. The Explanation appearing below Proviso to Section 11BB introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise but by an Appellate Authority or the Court, then for the purpose of this Section the order made by such higher Appellate Authority or by the Court shall be deemed to be an order made under sub-section (2) of [Section 11B](#) of the Act. It is clear that the Explanation has nothing to do with the postponement of the date from which interest becomes payable under [Section 11BB](#) of the Act.

UNION OF INDIA VS M/S. HAMDARD (WAQF) LABORATORIES ON 25 FEBRUARY, 2016 CONTINUED...



- As far the said principles are concerned, they are binding on us. But the facts in the case at hand are quite different. It is not a case where the assessee is claiming automatic refund. It is a case that pertains to grant of interest where the refund has been granted. The grievance pertains to delineation by the competent authority in a procrastinated manner. In our considered opinion, the principle [laid down in Ranbaxy Laboratories Limited](#) (supra) would apply on all fours to the case at hand. It is obligatory on the part of the Revenue to intimate the assessee to remove the deficiencies in the application within two days and, in any event, if there are still deficiencies, it can proceed with adjudication and reject the application for refund. The adjudicatory process by no stretch of imagination can be carried on beyond three months. It is required to be concluded within three months. The decision in [Ranbaxy Laboratories Limited](#) (supra) commends us and we respectfully concur with the same.
- IN GST CASE THE TIME IF FIFTEEN DAYS...

JIAN INTERNATIONAL V COMM DELHI GST



- **Rules 90(2) and (3) of the DGST Rules outline the process for handling refund applications. Upon filing a refund application, the respondent is required to either identify any discrepancies or deficiencies in the application within fifteen days and communicate these issues to the applicant using FORM GST RFD-03, or acknowledge the receipt of the application using FORM GST RFD-02. If discrepancies or deficiencies are found, the applicant must address these issues and submit a new refund application. The specific language of Rule 90 from the CGST/DGST Rules is provided below for reference.**

JIAN INTERNATIONAL V COMM DELHI GST CONTINUED...



- **The rules concerning the filing and processing of refund applications under the GST framework are designed to ensure a structured and timely resolution of such claims. According to Rules 90(2) and (3) of the DGST Rules, once a refund application is submitted, the respondent has fifteen days to review the application and either identify any discrepancies or deficiencies via FORM GST RFD-03, or acknowledge the receipt of a complete application through FORM GST RFD-02. If any deficiencies are noted, the applicant is required to correct these and refile the application.**

SIMILAR JUDGMENTS RELIED UPON



- **Prerna Enterprises vs Commissioner of Delhi Goods and Services Tax - 07 Feb 22**
- **Parnika Commercial and Estates Private Limited vs Union of India - 23 Oct 20**
- **Ankush Auto Deals vs Commissioner of DGST - 28 Oct 21**
- **V. M. Industries VS Commissioner Of Vat - 12 Oct 21**

REFUND – RELEVANT JUDGEMENTS



- Refund can not be stopped alone with the opinion of the department, the court said. As no appeal has been furnished against the order of AA, and there was no stay, the department cannot statutorily withhold the refund. **Shalender Kumar v. Commissioner Delhi West Cgst Commissionerate & Ors**
- Delhi High Court's decision in **Pedersen Consultants India Pvt. Ltd. v. Union of India and Ors.** represents a crucial development in GST jurisprudence. By allowing the refund of reversed ITC upon compliance by the supplier, the court has affirmed the principle of equity in the tax system and provided a measure of relief to businesses grappling with the complexities of GST compliance. This judgment is poised to contribute significantly to the evolving landscape of tax law in India, ensuring that the GST regime operates in a manner that is both efficient and just.
- **MISTAKEN DEPOSIT AND TIME LIMITATION OF TWO YEARS... NOT APPLICABLE.**

REFUND – RELEVANT JUDGEMENTS



- Refund can not be stopped alone with the opinion of the department, the court said. As no appeal has been furnished against the order of AA, and there was no stay, the department cannot statutorily withhold the refund. **Shalender Kumar v. Commissioner Delhi West Cgst Commissionerate & Ors**
- Delhi High Court's decision in **Pedersen Consultants India Pvt. Ltd. v. Union of India** and Ors. represents a crucial development in GST jurisprudence. By allowing the refund of reversed ITC upon compliance by the supplier, the court has affirmed the principle of equity in the tax system and provided a measure of relief to businesses grappling with the complexities of GST compliance. This judgment is poised to contribute significantly to the evolving landscape of tax law in India, ensuring that the GST regime operates in a manner that is both efficient and just.
- MISTAKEN DEPOSIT AND TIME LIMITATION OF TWO YEARS... NOT APPLICABLE.

REFUND – RELEVANT JUDGEMENTS CONTINUED...



- **Bharat Sanchar Nigam Limited V/S Union Of India & Ors.**
- **It is erroneous to assume that the application, which is accompanied by the documents as specified under Rule 89(2) of the Rules, is required to be treated as complete only after the taxpayer furnishes the clarification of further documents as may be required by the proper officer and that too from the date such clarification is issued”**
- **The Hon'ble High Court of Delhi in Truth Fashion v. Commissioner of DGST Delhi (W.P.(C) 486 of 2025, decided on February 10, 2025) held that the mere decision to prefer an appeal does not automatically stay the implementation of an appellate authority's order under Section 54(11) of the CGST Act, 2017. Consequently, statutory authorities cannot refuse compliance with appellate orders on the ground of a proposed appeal. The Court directed immediate disbursement of the refund with applicable statutory interest.**

REFUND – RELEVANT JUDGEMENTS CONTINUED...



- **Sapphire Intrex Ltd v Union of India & Ors 2023: DHC: 8978-DB.**
- **Delhi High Court ordered that the tax paid by assessee under duress should be refunded. The High Court cited CBIC's Instructions to reason that no recovery of tax dues can be made before passing an adjudication order and that no taxes can be paid while the search and seizure of assessee's premises is ongoing, unless the tax is paid voluntarily by the assessee.**

REFUND – RELEVANT JUDGEMENTS CONTINUED...



- **UNION OF INDIA & ORS. ...Appellants versus M/S. WILLOWOOD CHEMICALS PVT. LTD. & ANR.—SUPREME COURT**
- **In terms of the principal part of Section 56 of the CGST Act, the interest would be awarded at the rate of 6 per cent. The award of interest at 9 per cent would be attracted only if the matter was covered by the proviso to the said Section 56. The High Court was in error in awarding interest at the rate exceeding 6 per cent in the instant matters.**

2 YEARS TIME – DIRECTORY HOLDS MADRAS HC



- The Hon'ble High Court of Madras vide its order dated 06.11.2023 in the matter of M/s Lenovo (India) Pvt. Ltd. Vs. The Joint Commissioner of GST (Appeals – I) & Others in Writ Petition Nos. – 23604, 23605 and 23607 of 2022, **held that the denial of refund on the ground that the endorsement obtained was not within 45 days and therefore, the claim is barred by limitation is not sustainable, since the failure of obtaining endorsement in time is only due to the fault of AO and the petitioner cannot be denied the claim on the ground of inordinate delay in obtaining endorsement.** Further, it was held that provisions of Section 16 of IGST Act does not contemplate that use of goods is for authorized operation and submission of such endorsement as proof prior to 01.10.2023 is not required and therefore, rejection of refund claim on this ground is liable to be set aside. It was also held that the rejection of refund claim without pointing out the deficiencies and allowed the assessee to rectify the same, is in contravention of Rule 90(3) of the CGST Rules. In terms of Section 54(I) of the CGST Act, the assessee may make application within two years and in appropriate cases, refund application can be made even beyond two years. **'The time limit fixed under Section 54 (I) is directory in nature and it is not mandatory.'**

MAFATLAL INDUSTRIES V. UNION OF INDIA- 8:1 JUDGMENT OF THE SUPREME COURT



- **THEORY OF UNJUST ENRICHMENT- THREE TYPES OF REFUNDS ENVISAGED IN TAX LAW**
- First, where the statutory provision ("law") under which the tax is levied is itself challenged by the assessee on the ground of being violative of some provision of the Constitution, i.e., an unconstitutional levy. "In this class of cases, the claim for refund arises outside the provisions of the Act, for this is not a situation contemplated by the Act."
- Second, where the tax is collected by the authorities under a statute by misconstruction or wrong interpretation of the provisions of the Act, Rules or Notifications or by an erroneous determination of the relevant facts, i.e., an illegal levy. "In this class of cases, the claim for refund arises under the provisions of the Act. In other words these are situations contemplated by and provided for by the Act and the Rules."
- Third, where an assessee, with or without protest and with or without a few litigative steps being taken by him, has ended up paying a tax which he was not legally obliged to pay and which he is seeking refund of at a later point of time on discovering that he had paid the tax on account of a mistaken impression of the law, i.e., a tax paid under a mistake of law.

MAFATLAL INDUSTRIES V. UNION OF INDIA- 8:1 JUDGMENT OF THE SUPREME COURT



- **The plea was that Article 265 of the Constitution of India contains a mandate to the effect that 'no tax shall be levied or collected except by authority of law'. It was argued that this is a basic feature of the Constitution and cannot be ignored. If no tax can be collected except by authority of law, the same logic would prevail for retention of amounts collected without the authority of law.... [I]f the assessee is denied the refund, the State Government could retain the amount illegally collected, and it would amount to violation of the constitutional mandate enshrined in Article 265 of the Constitution. An equitable principle will not hold good against a constitutional mandate.**

MAFATLAL INDUSTRIES V. UNION OF INDIA- 8:1 JUDGMENT OF THE SUPREME COURT CONTINUED...



- **Refunding the duty paid by a manufacturer/assessee in situations where he himself has not suffered any loss or prejudice (i.e., where he has passed on the burden to others) is no economic justice; it is the very negation of economic justice. By doing so, the State would be conferring an unearned and unjustifiable windfall upon the manufacturing community thereby contributing to concentration of wealth in a small class of persons which may not be consistent with the common good.**

MAFATLAL INDUSTRIES V. UNION OF INDIA- 8:1 JUDGMENT OF THE SUPREME COURT CONTINUED...



- **Article 265 of the Constitution is declaratory in nature. It says that 'no tax shall be levied or collected except by authority of law'. This no doubt means that taxes collected contrary to law have to be refunded. But where a taxing enactment contains provisions providing for and governing the refund of taxes collected without the authority of law, the validity of such provisions, if and when questioned, has to be examined with reference to other provisions of the Constitution. Article 265 does not itself lay down any criteria for testing the validity of a statute. When it speaks of 'law', it no doubt refers to a valid law but the validity of a law has to be determined with reference to other provisions in the Constitution."**

SIKKIM HIGH COURT – CASH REFUND ON CLOSURE – HIGHLY DEBTABLE- SICPA INDIA PVT. LTD. AND ANR. VS. UNION OF INDIA



- The Sikkim High Court, while allowing refund of unutilised ITC upon business closure, observed that in the absence of an express statutory prohibition, entitles taxpayers to a refund under Section 49(6) read with Section 54 of the CGST Act. In doing so, the High Court has primarily relied on the ratio of Slovak India Trading Co. (supra). However, it appears that, before the Sikkim High Court, the decision of the Supreme Court in the case of Union of India and Ors. Vs. VKC Footsteps India Pvt. Ltd. [2021 (52) GSTL 513 (SC)] has not been cited. The Apex Court in this decision had held that - ▪ Refund claims are purely statutory entitlements and not constitutional rights. ▪ Parliament has deliberately restricted refunds under Section 54(3) to only two specified scenarios—zero-rated supplies and inverted duty structures. Since the binding decision of the Apex court appears to have been overlooked, the High Court's reasoning risks creating an interpretational conflict, as it indirectly expands refund eligibility beyond the legislative intent.

SICPA INDIA PVT. LTD. AND ANR. VS. UNION OF INDIA



- **While the judgment provides temporary relief to taxpayers in similar situations, its precedential value remains uncertain, given the Supreme Court's clear stance on judicial restraint in fiscal policy matters. Unless clarified by legislative amendment or a higher judicial forum, this ruling may invite further litigation, particularly where tax authorities contest refund claims.**
- **Businesses should thus exercise caution, recognising that the GST framework, as interpreted by the Supreme Court, does not inherently guarantee refunds outside the expressly stipulated conditions. Until a binding precedent emerges on this area of dispute, the taxpayer may be tempted to keep the dispute alive, suitably. [SICPA India Pvt. Ltd. and Anr. Vs. Union of India and Ors. [WP (C) 54 of 2023, Sikkim High Court].**



Thank You!

You have been a **Wonderful Audience**.
Trust **DGST Group** for the Latest Updates in GST Education.
Free Legal AID for Needy Professionals and Traders.