



Refund of Unutilised ITC

GST (Goods and Services Tax)

Accumulation of Input Tax Credit happens when the tax paid on inputs is more than the output tax liability. Such accumulation will have to be carried over to the next financial year till such time as it can be utilised by the registered person for payment of output tax liability. However, the GST Law permits refund of unutilised ITC in two scenarios, namely if such credit accumulation is on account of zero rated supplies or on account of inverted duty structure, subject to certain exceptions.

As per Section 54(3) of the CGST Act, 2017, a registered person may claim refund of unutilised input tax credit at the end of any tax period. A tax period is the period for which return is required to be furnished.

Refund of unutilised input tax credit is allowed only in following two cases:

a) **Zero rated supplies made without payment of tax:-**

As per Section 16(3) of the IGST Act, 2017, a registered person making zero rated supply is eligible to claim refund under either of the following options, namely: –

- Supply of goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or
- Supply of goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied.

The first category pertains to refund of unutilised ITC for which the registered person has to supply under Bond/LUT (as prescribed in Rule 96A of CGST Rules) and in the second category supply has been made after payment of Tax (IGST). In both the cases, refund can be applied under Section 54 of the CGST Act, 2017 read with Rule 89 or Rule 96, as the case may be, of the CGST Rules, 2017.

b) **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. This would include even those cases where supply has been made to merchant exporters under Notification no. 40/2017- Central Tax (Rate) dated 23.10.2017 or notification No. 41/2017-Integrated Tax (Rate) dated 23.10.2017 or both.

In such cases also, refund can be applied under Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017.

It should be noted that no refund of unutilised input tax credit is allowed in cases where the goods exported out of India are subjected to export duty. Further, no refund of input tax credit is allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

Refund of ITC on account of zero-rated supplies

The application filed for refund of unutilized ITC on account of zero-rated supplies (with payment of tax or without payment of tax under Bond/LUT) has to be accompanied by documentary evidence as may be prescribed to establish that a refund is due to the applicant; and such documentary or other evidence (including the documents referred to in section 33 of the CGST Act, 2017) as the applicant may furnish to establish that 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.

Rule 89(2) of the CGST Rules, 2017, specifies documents to be attached with the refund application in case of different types of Refund applicants.

However, it has been provided under section 54(4) of the CGST Act, 2017, that where the amount claimed as refund is less than two lakh rupees, then, for certifying that the incidence of such tax and interest had not been passed on to any other person, 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.

It has also been provided under section 54(6) of the CGST Act, 2017, that in cases where the claim for refund on account of zero-rated supply of goods or services or both made by registered persons,



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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, ninety per cent of the total amount so claimed, excluding the amount of input tax credit provisionally accepted; and the final order shall be issued within sixty days from the date of receipt of application complete in all respects (section 54(7) of the CGST Act, 2017 refers).

Rule 91 of CGST Rules, 2017 provide that the provisional refund is to be granted within 7 days from the date of acknowledgement of the refund claim. An order for provisional refund is to be issued in Form GST RFD 04 along with payment advice in the name of the claimant in Form GST RFD 05. The amount will be electronically credited to the claimant's bank account. The rules also prescribe the provisional refund will not be granted to if the person claiming refund has, during any period of five years immediately preceding the tax period to which the claim for refund relates, been prosecuted for any offence under the Act or under an earlier law where the amount of tax evaded exceeds two hundred and fifty lakh rupees;

It may also be noted that by default, the refund is to be credited to the Consumer Welfare Fund, except in the cases below:-

- 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;
- refund of unutilised input tax credit under section 54(3) of the CGST Act, 2017.
- 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;
- refund of tax in pursuance of section 77;
- 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
- the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

Formula for grant of refund in cases where the refund of accumulated Input Tax Credit is on account of zero rated supply is based on the following:

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

Where, -

- "Refund amount" means the maximum refund that is admissible;
- "Net ITC" means input tax credit availed on inputs and input services

during the relevant period other than the input tax credit availed for which refund is claimed under rule 89(4A) or 89(4B) or both;

(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 or letter of undertaking, other than the turnover of supplies in respect of which refund is claimed under rule 89(4A) or rule 89(4B) or both;

(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 letter of undertaking, 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 clause (112) of section 2, excluding –

- the value of exempt supplies other than zero-rated supplies and
- the turnover of supplies in respect of which refund is claimed under rule 89(4A) or 89(4B) or both, if any,

during the relevant period;

(F) "Relevant period" means the period for which the claim has been filed.

It may be noted that Rule 89(4B) has been inserted, w.e.f 23.10.2017, in CGST Rules, 2017 vide Notification no. 75/2017-Central Tax dated 29.12.2017 so as to provide that refund of input tax credit, availed only in respect of inputs availed in respect of inputs received under Notification no. 40/2017-Central Tax (Rate) dated 23.10.2017 or Notification no. 41/2017-Integrated Tax (Rate) dated 23.10.2017, or both or other inputs or input services used in making such exports shall be granted.

Refund of ITC on account of inverted duty structure.

As per Section 54(3) of CGST Act, 2017, refund of accumulated ITC will be granted where the credit accumulation has taken place on account of inverted duty structure. It may be noted that this would include even those cases where supply has been made to merchant exporters under Notification no. 40/2017- Central Tax (Rate) dated 23.10.2017 or notification No. 41/2017-Integrated Tax (Rate) dated 23.10.2017 or both. However, the Government also has the power to notify supplies where refund of ITC will not be admissible even if such credit accumulation



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is on account of an inverted duty structure. In exercise of the powers conferred by this section, the government has issued Notification no. 15/2017-Central Tax (Rate) dated 28.06.2017 wherein it has been notified that refund of unutilised input tax credit shall not be allowed under sub-section (3) of section 54 of the said CGST Act, 2017, in case of supply of services specified in sub-item (b) of item 5 of Schedule II of the CGST Act, 2017. The supplies specified under item 5(b) of Schedule II are construction services.

In respect of goods, the central government has issued Notification no. 5/2017- Central Tax (Rate) dated 28.06.2017 as amended by Notification no. 44/2017-Central Tax (Rate) dated 14.11.2017. The government has notified the following goods in respect of which unutilized ITC will not be admissible as refund: -

It has been clarified by the Government vide Circular no. 18/18/2017-GST dated 16.11.2017, that the aforesaid notification having been issued under clause (ii) of the proviso to sub-section (3) of Section 54 of the CGST Act, 2017, restriction on refund of unutilised input tax credit of GST paid on inputs will not be applicable to zero rated supplies, that is (a) export of goods or services or both; or (b) supply of goods or services or both to a Special Economic Zone Developer of special Economic Zone Unit. Accordingly, as regards export of fabrics, it has been clarified that subject to provisions of Section 54(10) of the CGST Act, 2017, a manufacturer of such fabrics will be eligible for refund of unutilised input tax credit of GST paid on inputs (other than input tax credit of GST paid on capital goods) in respect of fabrics manufactured and exported by him.

Further, Rule 89(2) (h) of CGST Rules, 2017 stipulate that refund claim on account of accumulated ITC (where such accumulation is on account of inverted duty structure) has to be accompanied by a statement containing the number and date of invoices received and issued during a tax period. Rule 89(3) of CGST Rules, 2017 also provide that where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant in an amount equal to the refund so claimed.

Provisions similar for refund of accumulated ITC for both types of Refund Applicants (suppliers making zero-rated/inverted duty supplies)

Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed as per Rule 89(3) of CGST Rules, 2017.

Also, interest will be paid for any delay in sanctioning of Refund beyond the mandated period of 60 days (as per Rule 94 of CGST Rules, 2017).

The refund and/or interest sanctioned, if any, will be directly credited to the bank account of the applicant.

Manual filing of refund claims

Circular no. 17/17/2017-GST dated 15.11.2017 clarifies that till such time as full-fledged refund module is operationalised by GSTN, manual filing of claims has been prescribed. The application for refund of unutilized input tax credit on inputs or input services used in making such zero-rated supplies shall be filed in FORM GST RFD01A on the common portal and the amount claimed as refund shall get debited in accordance with sub-rule (3) of rule 86 of the CGST Rules, 2017 from the amount in the electronic credit ledger to the extent of the claim. The common portal shall generate a proof of debit (ARN- Acknowledgement Receipt Number) which would be mentioned in the FORM GST RFD-01A submitted manually, along with the print out of FORM GST RFD-01A to the jurisdictional proper officer, and with all necessary documentary evidences as applicable (as per details in statement 3 or 5 of Annexure to FORM GST RFD-01), within the time stipulated for filing of such refund under the CGST Act, 2017. It has been further clarified vide Circular no. 24/24/2017-GST dated 21.12.2017, that the same procedure as prescribed in Circular no. 17/17/2017-GST dated 15.11.2017 shall be applicable to the refund of unutilized input tax credit 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) of goods or services or both except those supplies which are notified by the Government on the recommendations of the Council, in as much as they pertain to the method of filing of the refund claim and its processing which is consistent with the relevant provisions of the CGST Act, 2017

Manual claims in respect of inverted duty structure

Refund claims on account of inverted duty structure shall be filed for a tax period on a monthly basis in FORM GST RFD-01A. However, the registered persons having aggregate turnover of up to Rs.1.5 crore in the preceding financial year or the current financial year and who have opted to file FORM GSTR-1 on a quarterly basis (Notification No. 71/2017-Central Tax dated 29.12.2017 refers) shall apply for refund on a quarterly basis. Further, it is stated that the refund claim for a tax period may be filed only after filing the details in FORM GSTR-1 for the said tax period. It is also to be ensured that a valid return in FORM GSTR-3B has been filed for the last tax period before the one in which the refund application is being filed. Since the date of furnishing of FORM GSTR 1 from July, 2017 onwards has been extended while the dates of furnishing of FORM GSTR 2 and FORM GSTR 3 for such period are yet to be notified, it has been decided by the competent authority to sanction refund of provisionally accepted input tax credit at this juncture. However, the registered persons applying for refund must



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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 sections 42 of the CGST Act, 2017 have not been complied with in respect of the amount refunded. This undertaking should be submitted manually along with the refund claim till the same is available in FORM RFD-01A on the common portal.

In case of refund claim arising due to inverted duty structure, the prescribed statements - Statement 1 and Statement 1A of FORM GST RFD-01A have to be filled.

Drawback of all taxes under GST (Central Tax, Integrated Tax, State/ Union Territory Tax) should not have been availed while claiming refund of accumulated ITC under section 54(3)(ii) of the CGST Act, 2017. A declaration to this effect forms part of FORM GST RFD-01A as well.

Where to file the refund claims

The registered person needs to file the refund claim with the jurisdictional tax authority to which the taxpayer has been assigned as per the administrative order issued in this regard by the Chief Commissioner of Central Tax and the Commissioner of State Tax. In case such an order has not been issued in the State, the registered person is at liberty to apply for refund before the Central Tax Authority or State Tax Authority till the administrative mechanism for assigning of taxpayers to respective authority is implemented. However, in the latter case, an undertaking is required to be submitted stating that the claim for sanction of refund has been made to only one of the authorities. It is reiterated that the Central Tax officers shall facilitate the processing of the refund claims of all registered persons whether or not such person was registered with the Central Government in the earlier regime.

Modalities/Records in respect of manual refund claims

The Circular no.17/17/2017-GST dated 15.11.2017 & Circular no. 24/24/2017-GST dated 21.12.2017 lays down the modalities for maintenance of records in respect of such manual refund claims, which needs to be adhered to scrupulously. The time limits laid down in the Act need to be followed and the prescribed forms need to be generated manually for processing of such refund claims.

Refund amount to be sanctioned by respective authorities

Para 2.5 of Circular No. 17/17/2017-GST dated 15.11.2017 may be referred to in order to ascertain the jurisdictional proper officer to whom the

manual application for refund is to be submitted. Where any amount claimed as refund is rejected under rule 92 of the CGST Rules, 2017, 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 FORM GST RFD-1B until the FORM GST PMT-03 is available on the common portal. Further, the payment of the sanctioned refund amount shall be made only by the respective tax authority of the Central or State Government. Thus, the refund order issued either by the Central tax authority or the State tax/UT tax authority shall be communicated to the concerned counter- part tax authority within seven working days for the purpose of payment of the relevant sanctioned refund amount of tax or cess, as the case may be. It must be ensured that the timelines specified under section 54(7) of the CGST Act, 2017 and rule 91(2) of the CGST Rules, 2017 for the sanction of refund are adhered to.

Conclusion

The GST Law provides for multiple options to the zero rated suppliers to claim refund of taxes paid on the input side. One of the options is export under bond or LUT and claim refund of unutilised ITC. The law also provides for refund of unutilised ITC where credit accumulation is on account of inverted duty structure, subject to certain riders. Time lines have been set for processing of refund claims and claims not settled within 60 days will be paid with interest @6%. Moreover, 90% of the claim would be paid within 7 days of acknowledgement of claim on provisional basis. Claims are to be filed with minimum documentation and the refund amount will be credited directly to the claimant's bank account. The process is online and hassle free and with minimum interface with tax authorities.



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