

14. Refunds

Q 1. What is refund?

Ans. Refund has been discussed in section 54 of the CGST/SGST Act.

“Refund” includes

(a) any balance amount in the electronic cash ledger so claimed in the returns,

(b) any 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 (other than nil rated or fully exempt supplies),

(c) tax paid by specialized agency of United Nations or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries on any inward supply

Q 2. Can unutilized Input tax credit be allowed as refund?

Ans. Unutilized input tax credit can be allowed as refund in accordance with the provisions of sub-section (3) of section 54 in the following situations: -

(i) Zero rated supplies made without payment of tax;

(ii) Where credit has accumulated on account of rate of tax on inputs being higher than the rate of taxes on output supplies (other than nil rated or fully exempt supplies)

However, no refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty, and also in the case where 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.

Q 3. Can unutilized ITC be given refund, in case goods Exported outside India are subjected to export duty?

Ans. Refund of unutilized input tax credit is not allowed in cases where the goods exported out of India are subjected to export duty - as per the second proviso to Section 54(3) of CGST/SGST Act.

Q 4. Will unutilized ITC at the end of the financial year (after introduction of GST) be refunded?

Ans. There is no such provision to allow refund of such unutilized ITC at the end of the financial year in the GST Law. It shall be carried forward to the next financial year.

Q 5. Suppose a taxable person has paid IGST/CGST/SGST mistakenly as an Interstate/intrastate supply, but the nature of which is subsequently clarified. Can the CGST/SGST be adjusted against wrongly paid IGST or vice versa?

Ans. The taxable person cannot adjust CGST/SGST or IGST with the wrongly paid IGST or CGST/SGST but he is entitled to refund of the tax so paid wrongly - Sec.77 of the CGST/SGST Act.

Q 6. Whether purchases made by Embassies or UN are taxed or exempted?

Ans. Supplies to the Embassies or UN bodies will be taxed, which later on can be claimed as refund by them in terms of Section 54(2) of the CGST/SGST Act. The claim has to be filed in the manner prescribed under CGST/SGST Refund rules, before expiry of six months from the last day of the month in which such supply was received.

[The United Nations Organization and Consulates or Embassies are required to take a Unique Identity Number [section 26(1) of the CGST/SGST Act] and purchases made by them will be reflected against their Unique Identity Number in the return of outward supplies of the supplier(s)]

Q 7. What is the time limit for taking refund?

Ans. A person claiming refund is required to file an application before the expiry of two years from the “relevant date” as given in the Explanation to section 54 of the CGST/SGST Act.

Q 8. Whether principle of unjust enrichment will be applicable in refund?

Ans. 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;*
- vi. such other class of persons who has borne the incidence of tax as the Government may notify.*

Q 9. In case the tax has been passed on to the

consumer, whether refund will be sanctioned?

Ans. Yes, the amount so refunded shall be credited to the Consumer Welfare Fund - Section 57 of the CGST/SGST Act

Q 10. Is there any time limit for sanctioning of refund?

Ans. Yes, refund has to be sanctioned within 60 days from the date of receipt of application complete in all respects. If refund is not sanctioned within the said period of 60 days, interest at the rate notified not exceeding 6% will have to be paid in accordance with section 56 of the CGST/SGST Act.

However, in case where provisional refund to the extent of 90% of the amount claimed is refundable in respect of zero-rated supplies made by certain categories of registered persons in terms of sub-section (6) of section 54 of the CGST/SGST Act, the provisional refund has to be given within 7 days from the date of acknowledgement of the claim of refund.

Q 11. Can refund be withheld by the department?

Ans. Yes, the proper officer can withhold refund of accumulated ITC under Section 54(3) in the following circumstances:

- i. If the person has failed to furnish any return till he files such return;*
- ii. If the registered taxable person is required to pay any tax, interest or penalty which has not been*

stayed by the appellate authority/Tribunal/ court, till he pays such tax interest or penalty;

The proper officer can also deduct unpaid taxes, interest, penalty, late fee, if any, from the refundable amount – Section 54(10) (d) of the CGST/SGST Act

The Commissioner can withhold any refund, if, the order of refund is under appeal and he is of the opinion that grant of such refund will adversely affect revenue in the said appeal on account of malfeasance or fraud committed - Sec.54 (11) of the CGST/SGST Act.

Q 12. Where the refund is withheld under Section 54(11) of the CGST/SGST Act, will the taxable person be given interest?

Ans. If as a result of appeal or further proceeding the taxable person becomes entitled to refund, then he shall also be entitled to interest at the rate notified not exceeding 6% [section 54(12) of the CGST/SGST Act].

Q 13. Is there any minimum threshold for refund?

Ans. No refund shall be granted if the amount is less than Rs.1000/-. [Sec.54 (14) of the CGST/SGST Act]

Q 14. How will the refunds arising out of existing law be paid?

Ans. The refund arising out of existing law will be paid as per the provisions of the existing law and will be made in cash and will not be available as ITC.

Q 15. Whether refund can be made before verification of documents?

Ans. In case of any claim of refund to a registered person on account of zero rated supplies of goods or services or both (other than registered persons as may be notified), 90% refund may be granted on provisional basis before verification subject to such conditions and restrictions as prescribed in Refund rules in accordance with sub-section 6 of section 54 of the CGST/SGST Act.

Q 16. In case of refund under exports, whether BRC is necessary for granting refund?

Ans. In case of refund on account of export of goods, the refund rules do not prescribe BRC as a necessary document for filing of refund claim. However, for export of services details of BRC is required to be submitted along with the application for refund.

Q 17. Will the principle of unjust enrichment apply to exports and supplies to SEZ Units?

Ans. The principle of unjust enrichment would not be applicable to zero-rated supplies [i.e. exports and supplies to SEZ units]

Q 18. How will the applicant prove that the principle of unjust enrichment does not apply in his case?

Ans. Where the claim of refund is less than Rs.2 Lakh, a self-declaration by the applicant based on the documentary or other evidences available with him, certifying that the incidence of tax has not been passed on to any other person would make him eligible to get refund. However, if the claim of refund is more than Rs.2 Lakh, the applicant is required to submit a certificate from a Chartered Accountant or a Cost Accountant to the effect that the incidence of tax has not been passed on to any other person.

Q 19. Today under VAT/CST merchant exporters can purchase goods without payment of tax on furnishing of a declaration form. Will this system be there in GST?

Ans. There is no such provision in the GST law. They will have to procure goods upon payment of tax and claim refund of the tax paid or the unutilized input tax credit in accordance with section 54(1)/54(3) of the CGST/SGST Act.

Q 20. Presently under Central law, exporters are allowed to obtain duty paid inputs, avail ITC on it and export goods upon payment of duty (after utilizing the ITC) and thereafter claim refund of the duty paid on exports. Will this system continue in GST?

Ans. Yes. In terms of Section 16 of the IGST Act, a registered taxable person shall have the option either to

export goods/services without payment of IGST under bond or letter of undertaking and claim refund of ITC or he can export goods/services on payment of IGST and claim refund of IGST paid.

Q 21. What is the time period within which an acknowledgement of a refund claim has to be given?

Ans. Where an application relates to a claim for refund from the electronic cash ledger as per sub-section (6) of section 49 of the CGST/SGST Act made through the return furnished for the relevant tax period the acknowledgement will be communicated as soon as the return is furnished and in all other cases of claim of refund the acknowledgement will be communicated to the applicant within 15 days from the date of receipt of application complete in all respect.

Q 22. What is the time period within which provisional refund has to be given?

Ans. Provisional refund to the extent of 90% of the amount claimed on account of zero-rated supplies in terms of sub-section (6) of section 54 of the CGST/SGST Act has to be given within 7 days from the date of acknowledgement of complete application for refund claim.

Q 23. Is there any specified format for filing refund claim?

Ans. Every claim of refund has to be filed in Form GST RFD 1. However, claim of refund of balance in electronic cash ledger can be claimed through furnishing of monthly/quarterly returns in Form GSTR 3, GSTR 4 or GSTR 7, as the case may be, of the relevant period.

Q 24. Is there any specified format for sanction of refund claim?

Ans. The claim of refund will be sanctioned by the proper officer in Form GST RFD-06 if the claim is found to be in order and payment advice will be issued in Form GST RFD-05. The refund amount will then be electronically credited to the applicants given bank account.

Q 25. What happens if there are deficiencies in the refund claim?

Ans. Deficiencies, if any, in the refund claim has to be pointed out within 15 days. A form GST RFD-03 will be issued by the proper officer to the applicant pointing out the deficiencies through the common portal electronically requiring him to file a refund application after rectification of such deficiencies.

Q 26. Can the refund claim be rejected without assigning any reasons?

Ans. No. When the proper officer is satisfied that the

claim is not admissible he shall issue a notice in Form GST RFD-08 to the applicant requiring him to furnish a reply in GST RFD -09 within fifteen days and after consideration of the applicant's reply, he can accept or reject the refund claim and pass an order in Form GST RFD-06 only.

Q 27. Refund of accumulated ITC is allowed when such accumulation is on account of inverted tax structure. Are there any exceptions?

Ans. Yes. Refund of accumulated ITC will not be admissible for construction services. Refund will also not be admissible where credit accumulation due to inverted tax structure is in respect of the following goods:

<i>Sr. No.</i>	<i>Tariff item, heading, sub-heading or Chapter</i>	<i>Description of Goods</i>
1	5007	<i>Woven fabrics of silk or of silk waste</i>
2	5111 to 5113	<i>Woven fabrics of wool or of animal hair</i>
3	5208 to 5212	<i>Woven fabrics of cotton</i>
4	5309 to 5311	<i>Woven fabrics of other vegetable textile fibres, paper yarn</i>
5	5407, 5408	<i>Woven fabrics of manmade textile materials</i>
6	5512 to 5516	<i>Woven fabrics of manmade staple fibres</i>
6A	5608	<i>Knotted netting of twine, cordage or rope; made up fishing nets and other made up nets, of textile materials</i>
6B	5801	<i>Corduroy fabrics</i>
6C	5806	<i>Narrow woven fabrics, other than goods of heading 5807; narrow fabrics consisting of warp without weft assembled by means of an adhesive (bolducs)"</i>

7	60	<i>Knitted or crocheted fabrics [All goods]</i>
8	8601	<i>Rail locomotives powered from an external source of electricity or by electric accumulators</i>
9	8602	<i>Other rail locomotives; locomotive tenders; such as Diesel-electric locomotives, Steam locomotives and tenders thereof</i>
10	8603	<i>Self-propelled railway or tramway coaches, vans and trucks, other than those of heading 8604</i>
11	8604	<i>Railway or tramway maintenance or service vehicles, whether or not self-propelled (for example, workshops, cranes, ballast tampers, trackliners, testing coaches and track inspection vehicles)</i>
12	8605	<i>Railway or tramway passenger coaches, not self-propelled; luggage vans, post office coaches and other special purpose railway or tramway coaches, not self-propelled (excluding those of heading 8604)</i>
13	8606	<i>Railway or tramway goods vans and wagons, not self-propelled</i>
14	8607	<i>Parts of railway or tramway locomotives or rolling-stock; such as Bogies, bissel-bogies, axles and wheels, and parts thereof</i>
15	8608	<i>Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical) signalling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields; parts of the foregoing</i>

Q 28. Whether the above restriction will also be applicable for zero rated supplies?

Ans. No. It has been clarified vide Circular No. 18/18/2017-GST dated 16.11.2017 that the restriction on refund of unutilized input tax credit in inverted tax structure is not applicable in zero rated supplies because the relevant Notification No. 05/2017-Central Tax (Rate) dated 28.06.2017 restricting refund of unutilized input tax credit has been issued under clause (ii) of the proviso to sub-section (3) of Section 54 of the CGST Act, 2017.

Q 29. In respect of export of goods on payment of IGST, will the exporter need to file a separate refund claim?

Ans. No. The shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:-

- (a) the person in charge of the conveyance carrying the export goods duly files an export manifest or an export report covering the number and the date of shipping bills or bills of export; and*
- (b) the applicant has furnished a valid return in FORM GSTR-3 or FORM GSTR-3B and GSTR-1 or Table 6A of the said GSTR-1.*

Q 30. Is it necessary to execute a bond for effecting zero rated supplies?

Ans. No. The facility to export under Letter of Undertaking (LUT) has been extended to all zero rated suppliers (barring a few exceptions such as those who have been prosecuted for an offence involving tax of Rs. 2.5 crore) vide Notification No. 37/2017 – Central Tax dated 4.10.2017. Circular No. 8/8/2017-GST dated 4.10.2017 may also be referred to.

Q 31. Is there any provision for filing manual refund claims under GST?

Ans. Yes. Circular No.17/17/2017-GST dated 15.11.2017 has been issued clarifying the procedure for filing of manual refund claims. The circular mandates that due to the non-availability of the refund module on the common portal, it has been decided by the competent authority, on the recommendations of the Council, that the applications/documents/forms pertaining to refund claims on account of zero-rated supplies shall be filed and processed manually till further orders.
