



## **THE CHAMBER OF TAX CONSULTANTS**

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### **IDT STUDY CIRCLE MEETING**

#### **Legal and Practical Issues in GST Refund**

**Adv Avinash Poddar     25.11.2020**

#### 1. Inverted Duty regarding issues

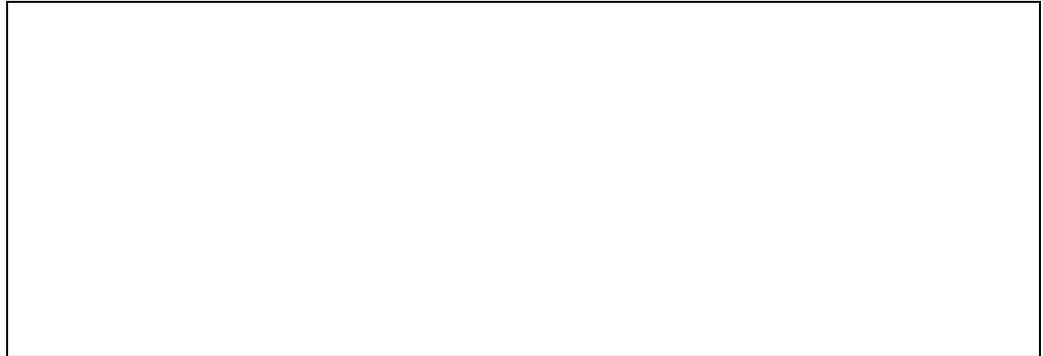
- (i) A Ltd was manufacturing and trading goods which are covered in the inverted duty structure. They filed refund application and the total number of invoices for which the refund claim was filed was 50 invoices.

Out of those 50 invoices around 20 invoices were not being reflected in Form GSTR 2A. A Ltd submitted the copy of invoices but the proper officer has rejected the refund to the extent of those 20 invoices.

Whether it is legally permissible.

Also the clarification through circular shall be effective for which period and which refund applications?

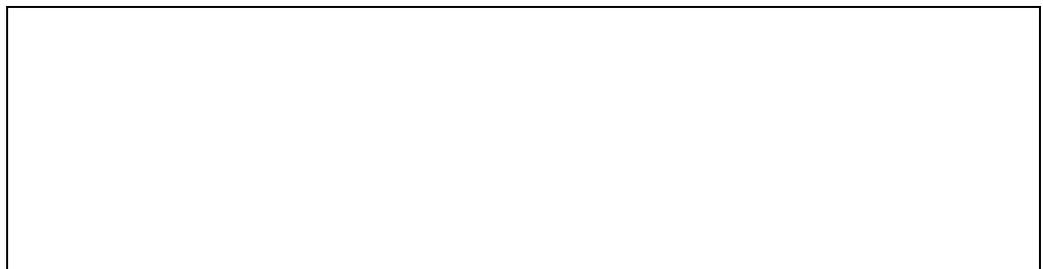
- (ii) Whether the credit getting accumulated on account of input services and capital goods, where the accumulation is because of inverted duty structure, eligible for refunds under section 54(3).



- (iii) Mr. A is engaged in providing service of diamond cutting and polishing. For providing such service he procures certain inputs which are having rate of tax higher than the rate applicable on outward supplies. Although the quantum and proportion of such inputs is less, still he filed the refund application considering himself to be covered under the inverted duty structure.

Mr A received a show cause notice by the proper officer asking him to show cause why the application for refund should not be rejected.

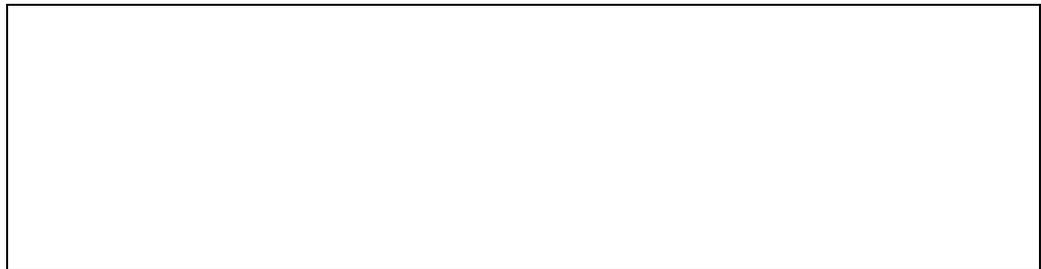
He therefore has approached you for legal advice. Kindly advice regarding the legal position of inverted duty structure.



- (iv) Avinash is engaged in trading of Filament Yarn which was procured at the rate of 18%. Value of purchases was 50 Crores, the stock was still unsold on 30.09.2020. From 01.10.2020 the rate of Filament Yarn was reduced from 18% to 12%.

Concern of Avinash is he is having a credit of 9 crores and after selling the entire stock he is afraid of having balance of accumulated credit in crores which will cause lot of working capital blockage and hardship.

Avinash has approached you for expert advice, whether he will be covered in the inverted duty and hence eligible for refund of such accumulated credit.



## 2. Issues with regards to Exporters:

- (i) ABC Enterprises is indulged in the business of exports. It exported the goods with payment of IGST and have claimed refund for the same. It is regularly exporting the goods and claiming refund as well as other incentives with regards to exports.

For the exports done on last occasion for the month of January 2020, he got the refund but due to certain uncontrollable circumstances and reasons the sale proceeds against that export could not be received.

Lately ABC Enterprises received a notice from the respective department asking for repayment of the refund claimed along with interest.

ABC Enterprises approaches you to understand whether such kind of notices could be sent and if yes whether there is any legal remedy available.

ABC Enterprises further asks you that in case he writes off the total amount what shall be the repercussion, whether he will have to refund back the amount claimed as refund along with interest?

(ii) *Capping of Value*

Notification 16/20 dt 23.03.2020 amends Rule 89(4)(c) and as per the amendment done now after this amendment in rules, the export value of goods cannot exceed 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier.

Client wants you to advise him with regards to the following:

- (a) Whether such an amendment legally tenable and within the framework of Act.
- (b) What will the applicability of such an amendment? Whether shall be applicable for matters filed after the date of amendment, whether for exports after the amendment?
- (c) How to determine like goods? What will happen when he is pure exporter and is not engaged in domestic supplies?

- (iii) ABC Exim is engaged in export of Tobacco. It has exported with payment of tax. In the shipping bill the amount of compensation cess was somehow left to be mentioned.

Therefore, while making export he paid IGST but could not pay compensation cess. Goods were duly exported and refund also was received. But later on it was observed that huge credit of compensation cess was blocked and could not be received by the exporter as refund.

He immediately approached the officers and came to know about the issue in shipping bill. This was not at all the fault of exporter still his crores of Rs was blocked.

He approached the officers but the answer he got was the entire system is electronic and they cannot do anything although they amended the shipping bill and now compensation cess was being reflected.

ABC Exim paid the differential tax and approached the officers for refund of total amount. But the officers on the ground of it being system based have not sanctioned the refund arising on account of compensation cess.

Kindly discuss the legal implication and also advise ABC Exim the next course of action.



### 3. Withholding of refunds

- (i) It is being observed now a says that in bulk the department on the contention that the supplier from whom the goods were procured and finally exported have not paid the tax and therefore refund should not be allowed.

Officers are withholding the refund on the basis of this allegation. Tax payer exporter who has a past history of couple of years of being into exports approaches you for your kind advise as to what he should do and also whether legally refunds of IGST can be withheld by the officers on the pretext of the supplier not paying the tax?

- (ii) As SOP issued by the Board as Circular No.131/1/2020 – GST dated 23.01.2020 to be followed by the exporters.

An exporter approaches you so as to understand the legal sanctity of such circular and whether the said circular is binding of him. Kindly advise.

#### 4. Limitation Issues

- (i) Mr. A has raised correct tax invoice and have collected IGST from its customers and have filed GSTR 1 properly for the relevant period of F.Y 2017-18. But due to some glitches in accounting system in reporting of Form GSTR 3B, amount of IGST got wrongly reflected as CGST and SGST and the same was also paid by the registered person.

While filing FORM GSTR 9C i.e. at the time of filing reconciliation statement mistake was identified. Correct tax i.e. IGST was paid through FORM DRC-03 and then application for refund of CGST and SGST was filed in FORM GST RFD-01 in the month of April 2020 for refund of excess tax paid under the head CGST and SGST. Can refund

be rejected on the basis of time limitation that 2 years have been lapsed from the due date of filing of FORM GSTR 3B.

- (ii) A Ltd is running a textile manufacturing unit which has inward supplies of inputs at higher rate than the rate which is applicable on outward supplies. He filed the refund application for the month of September 2018 in November 2020.

The proper officer rejected the refund application on the ground of limitation.

Whether such rejection is legally correct, discuss?

## 5. Unjust Enrichment

Mr. A is a physically handicapped person. He had purchased a Motor Vehicle (Car) not exceeding 4000 mm. As per the Notification No. 14/2019 – IGST dated 30 September 2019, concessional rate of 18% of tax is chargeable on motor vehicle.

But at the time of purchase authorized dealer have charged full rate of tax alongwith the compensation cess ignoring the fact that he has given medical certificate at the time of purchase.

Mr A approached the dealer for refund he denied and said that he cannot refund because he has already deposited the said amount. Then Mr A filed refund application with department but the said application was also rejected.

Mr A has finally found you to be an expert of the subject and he seeks your advise to understand whether this amounts to unjust enrichment and also whether he is eligible for refund of the excess amount charged as tax and compensation cess.

If the answer with regards to eiligibility of refund is in affirmative, Mr A requests you to kindly advise how the amount can be received as refund.

