

THE CHAMBER OF TAX CONSULTANTS

Indirect Taxes Study Circle Meeting

DATE : 30th April 2020

Topic : Issues in Export of goods & Refund under GST

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Case Study No 1 – Refund and Valuation of export of Goods.

Company A Ltd undertakes the export of goods. Depending on the terms of the contract, the price agreed with the customer includes the Freight (Air/Sea) from the Indian port to the Foreign Port / Foreign Destination i.e. price is CIF.

In some cases the exports are for delivery at Indian port ie. FOB price.

They intend to claim refund of GST for such export of goods and want to know the following:

- a. While paying IGST on exports for the purpose of refund, whether IGST should be paid on CIF or FOB value for respective contracts.
- b. While claiming refund of untutilised ITC for exports, whether Value under refund formula should be FOB or CIF.
- c. Whether availment of the various benefits under advance license, drawback etc based on FOB value can impact GST valuation.

- **RELEVANT PROVISIONS.**

- **SECTION 15. Value of taxable supply.** — (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

- Section 15 (2) The value of supply shall include —
- (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;
- (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;
- (c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;
- (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and
- (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.
- ***Explanation.*** — For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

Case Study No 2 – Capping of export value:-

- The formula for refund of unutilised ITC on account of exports has been amended vide Notification 16/20 dt 23.03.20.
- As per the amendment, the export value of goods cannot exceed 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier.
- Thus the amendment will effectively cap the quantum of refund of GST for the unutilised ITC.
- Issues arising from said amendment:
- Is it within the powers of the Act to impose such restrictions?
- How will such amendment apply i.e. Is such amendment prospective or retrospective.
- For e.g. whether such amendment will apply to all refund claims filed after 23-03-2020 or refund claimed which cover relevant period of 23-03-2020 onwards.

Case Study No 2 – Capping of export value:-

- Can the restricted export amount be made applicable in numerator and denominator both of formula as per Rule 89?
- What happens to cases wherein there are no comparable such as 100% EOU units or a unit with no domestic sale of like products?
- If a Supplier has obtained a separate registration for factory from where export takes place and has separate registration for domestic supplies like another state, can such value be adopted.
- Challenges in identifying - like goods? – Can we compare Iphone Mobiles with Xiaomi Android mobiles.
- How to identify – Similarly placed supplier – Can we compare - Amul with Mother Dairy?

RELEVANT STATUTORY PROVISIONS

REFUND FORMULA.

RULE 89 (4) OF CGST RULES, 2017.

$$\begin{aligned} \text{Refund Amount} = & (\text{Turnover of zero-rated supply of goods} + \\ & \underline{\text{Turnover of zero rated supply of services}}) \\ & \div \text{Adjusted Total Turnover} \\ & \times \text{Net ITC} \end{aligned}$$

RELEVANT STATUTORY PROVISIONS

PROVISIONS PRIOR TO 23-03-2020.

(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 sub-rules (4A) or (4B) or both;

RELEVANT STATUTORY PROVISIONS

PROVISIONS AFTER 23-03-2020.

(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 or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier,** whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;".

RELEVANT STATUTORY PROVISIONS

NO CHANGE IN DEFINITION OF TOTAL TURNOVER.

(E) —Adjusted Total Turnover means the sum total of the value of-

- (a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and
- (b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,

excluding-

- (i) the value of exempt supplies other than zero-rated supplies; and
 - (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any,
- during the relevant period.

Case Study No 3 – RECOVERY OF REFUND ON NON- REALISATION OF EXPORT PROCEEDS IN FOREIGN EXCHANGE.

- Definition of export of goods did not mandate receipt of Foreign Exchange for such goods.
- New Rule 96B inserted w.e.f 23-03-2020 which requires receipt of foreign currency for claiming refund with respect to export of goods.
- Issues:
- Whether such restriction can be imposed by way of rules.
- Whether such amendment is prospective or retrospective i.e. does it apply to goods exported after 23-03-2020 or for earlier exports also.
- What is the due date for refunding such refund amount?. How will interest be calculated on delayed return of refund.
- Impact of such provision on Free Samples sent to Customers outside India.

RELEVANT STATUTORY PROVISIONS.

IGST Act, 2017.

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

Section 16 (1) “zero rated supply” means any of the following supplies of goods or services or both, namely :-

- (a) export of goods or services or both; or
- (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

Section 16 (3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely :-

- (a) he may supply 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**
- (b) he may supply 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,**

in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.

RELEVANT STATUTORY PROVISION

- **96B. Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised.** –(1) *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:*

RELEVANT STATUTORY PROVISION

- *Provided that 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.*
- *(2) 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.”*

RELEVANT STATUTORY PROVISION

- In **FORM GST RFD-01**, after the declaration under rule 89(2)(g), the following undertaking shall be inserted, namely:-
- **"UNDERTAKING**
- ***I hereby undertake to deposit to the Government the amount of refund sanctioned along with interest in case of non-receipt of foreign exchange remittances as per the proviso to section 16 of the IGST Act, 2017 read with rule 96B of the CGST Rules 2017.***
- ***Signature-***
- ***Name –***
- ***Designation / Status***

Case Study No 4 – DENIAL OF REFUND ON ACCOUNT OF NON-MATCHING OF INPUT INVOICES.

- Para 36 of circular No. 125/44/2019-GST dated 18.11.2019, allowed the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A by submission of the copies of such invoices were required to be uploaded.
- Such instructions are modified vide Circular No.135/05/2020 – GST dt 31-03-2020 to restrict refund to the extent of invoices which are reflecting in GSTR 2A.
- Issues:
 - Whether such restriction is valid.
 - Whether such restriction are retrospective or prospective. Do they apply to processing of all pending refund claims.
 - Are we entitled for refund to the extent of 20% or 10% (as applicable) of matched credit
 - Impact of amendment to proviso to Rule 36 (4) which allows cumulative availment of the
 - Action to be taken in case of rejection of refund.

PARA 5 OF Circular No.135/05/2020 – GST dt 31-03-2020

- 5. Guidelines for refunds of Input Tax Credit under Section 54(3)
- 5.1 In terms of para 36 of circular No. 125/44/2019-GST dated 18.11.2019, the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No. 49/2019-GST dated 09.10.2019, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant.
- 5.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to that extent.

Rule 36 (4) of CGST Rules, 2017.

- *(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed [10 per cent] of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.*

- **Proviso inserted from 3rd April 2020.**

*Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in **FORM GSTR-3B** for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.*

Case Study No 5 – MENTIONING OF HSN DETAILS IN REFUND APPLICATION.

- New Instructions for Requirements of HSN in para 6 of Circular No.135/05/2020 – GST dt 31-03-2020.
- **Impact of such Instructions:**
 - Whether such restriction are retrospective or prospective. Do they apply to processing of all pending refund claims or for new refund claims or for refund for period w.e.f 31-03-2020.
 - Whether HSN needs to be incorporated based on our own understanding.
 - Can refund be rejected on account of non-submission of the HSN details.
 - Action to be taken in case of rejection of refund.

PARA 6 OF Circular No.135/05/2020 – GST dt 31-03-2020

- 6. New Requirement to mention HSN/SAC in Annexure 'B'
- 6.1 References have also been received from the field formations that HSN wise details of goods and services are not available in FORM GSTR-2A and therefore it becomes very difficult to distinguish ITC on capital goods and/or input services out of total ITC for a relevant tax period. It has been recommended that a column relating to HSN/SAC Code should be added in the statement of invoices relating to inward supply as provided in Annexure—B of the circular No. 125/44/2019- GST dated 18.11.2019 so as to easily identify between the supplies of goods and services.
- 6.2 The issue has been examined and considering that such a distinction is important in view of the provisions relating to refund where refund of credit on Capital goods and/or services is not permissible in certain cases, it has been decided to amend the said statement. Accordingly, Annexure-B of the circular No. 125/44/2019- GST, dated 18.11.2019 stands modified to that extent.

PARA 6 OF Circular No.135/05/2020 – GST dt 31-03-2020

- 6.3 A suitably modified statement format is attached for applicants to upload the details of invoices reflecting in their FORM GSTR-2A. The applicant is, in addition to details already prescribed, now required to mention HSN/SAC code which is mentioned on the inward invoices. In cases where supplier is not mandated to mention HSN/SAC code on invoice, the applicant need not mention HSN/SAC code in respect of such an inward supply.

Case Study No 6 – BUNCHING OF REFUND CLAIMS.

Circular No. 125/44/2019-GST dated 18.11.2019 and earlier circulars had clarified that filling of the refund claims for various tax periods is allowed but such bunching cannot extend beyond financial years.

Such instructions are modified vide Circular No.135/05/2020 – GST dt 31-03-2020 to allow bunching of refund applications beyond financial years.

Benefits of the said provisions will apply to merchant exporters

- e.g. Exports recognized in books and returns in March as goods dispatched from vendor, but actual exports i.e. shipping bill and BL filed in April.
- Issues:
- Whether old refund application which are pending can be modified.
- The portal is still not allowing the above. What should be temporary solution?

PARA 2 OF Circular No.135/05/2020 – GST dt 31-03-2020

2.4 On perusal of the provisions under sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, 2017 and sub-section (3) of section 54 of the CGST Act, there appears no bar in claiming refund by clubbing different months across successive Financial Years.

2.5 The issue has been examined and it has been decided to remove the restriction on clubbing of tax periods across Financial Years. Accordingly, circular No. 125/44/2019-GST dated 18.11.2019 stands modified to that extent i.e. the restriction on bunching of refund claims across financial years shall not apply.

Case Study No 7 – INVERTED DUTY STRUCTURE

A Company ABC Ltd is engaged in exclusively business of trading of Product X. The GST rate of product X was 18%. Due to various representations made by the trade body, the rate of Product X was revised downwards w.e.f 1-04-2020 to 12%.

Company ABC Ltd had huge stock of purchases of ABC Ltd and does not supply any other product. All such purchases were done @ 18% GST. The sale of such goods will be done @ 12%. This will result in accumulation of input tax credit.

It seeks advice on following:

- a. Whether such rate mismatch is in the nature of inverted duty structure.
- b. Can it availed refund of such accumulated input tax credit.

RELEVANT STATUTORY PROVISIONS

Section 54 (3) of CGST ACT, 2017.

Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period :

Provided that no refund of unutilised input tax credit shall be allowed in cases other than —

- (i) zero rated supplies made without payment of tax;
- (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), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council :

RELEVANT STATUTORY PROVISIONS

Section 2 (83)

“outward supply” in relation to a taxable person, means 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

Section 2 (67)

(67) “inward supply” in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration

Case Study No 8 – TIME LIMIT OF FILLING REFUND CLAIM.

XYZ Ltd exported goods in the month of September 2017. It filed its refund claim for accumulated credit in August 2017. However the said refund claim was returned on account of some deficiencies vide FORM GST RFD-03 in first week of September 2019.

XYZ Ltd. needed some time to collate the documents and thereafter again submitted the refund claim in first week of November 2019. The refund claim has been rejected on the ground of time bar.

Whether the stance of the department is correct.

What options does XYZ have.

RELEVANT STATUTORY PROVISIONS.

SECTION 54. Refund of tax. — (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed :

Section 54 (14) (2) “relevant date” means

....(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of —

- (i) receipt of payment in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India], where the supply of services had been completed prior to the receipt of such payment; or
- (ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice

RELEVANT STATUTORY PROVISIONS.

- **Rule 90 of CGST Rules, 2017.**
- **90. Acknowledgement.-** (1) Where the application relates to a claim for refund from the electronic cash ledger, an acknowledgement in **FORM GST RFD-02** shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.
- (2) The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer who shall, within a period of fifteen days of filing of the said application, scrutinize the application for its completeness and where the application is found to be complete in terms of sub-rule (2), (3) and (4) of rule 89, an acknowledgement in **FORM GST RFD-02** shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing

– RELEVANT STATUTORY PROVISIONS.

- **Rule 90 of CGST Rules, 2017.**
- (3) Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in **FORM GST RFD-03** through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies.
- (4) Where deficiencies have been communicated in **FORM GST RFD-03** under the State Goods and Service Tax Rules, 2017, the same shall also be deemed to have been communicated under this rule along with the deficiencies communicated under sub-rule (3).

Case Study No 9 – SEZ to DTA transfer.

- A company is having one SEZ unit and one DTA Unit. It intends to close its SEZ unit and transfer all assets and liabilities to DTA unit except SEZ factory building. Both units are having GST Registrations. Custom Authority does not allow clearance of physical goods and assets from SEZ without payment of Basic custom duty and IGST. It seeks guidance as to tax implications of above referred transaction:
- whether SEZ unit is obliged to raise invoice on DTA Unit for transfer of finished goods, Raw materials, capital goods etc and charge IGST thereon? whether it has to declared in GSTR 1 and GSTR 3 B. Whether e way bill is to made?
- Whether Goods can be removed from SEZ units to domestic units on the basis of bill of entry. Whether DTA Unit has to pay custom duty and IGST on such clearances? whether in such a case, there is dual tax liability?
- Whether DTA unit can claim ITC of taxes paid above?
- Can Company take a position that SEZ is transferring business as a whole to DTA registration and hence entire business (including all goods and assets) is exempt under entry -----of Notification 12 / 2017-CT

THANK YOU

BALANCED VIEW

PRESENTED BY

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