REFUNDS

For the sake of brevity, any reference to a section unless otherwise specified shall be construed as reference to CGST Act. Likewise, any reference to a rule unless otherwise specified shall be construed as reference to CGST Rules.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- identify the situations leading to refund claim
- explain the time limit for claiming refund and concept of ‘relevant date’ to calculate such time limit
- identify the conditions to be satisfied and documents to be filed to claim the refund in different circumstances
- illustrate the circumstances under which refund claim may be withheld by the Department
- explain the ‘principle of unjust enrichment’
- describe the provisions relating to ‘Consumer Welfare Fund’.
- explain provisions relating to refund to UN Bodies, Embassies, etc.
- compute the interest payable to the applicant on delayed refunds
1. INTRODUCTION

Timely refund mechanism is essential in tax administration, as it facilitates trade through the release of blocked funds for working capital, expansion and modernisation of existing business.

The provisions pertaining to refund contained in the GST law aim to streamline and standardise the refund procedures under GST regime. Under the GST regime, there is a standardised form for making any claim for refunds. The claim and sanctioning procedure is primarily online and time bound, which is a marked departure from the earlier time consuming and cumbersome procedure. Further, provisions relating to refund are more transparent as compared to provisions contained in the earlier indirect tax regime.

Chapter XI - Refunds [Sections 54 to 58] of the CGST Act and Chapter X – Refund [Rule 89 to 97A] of the CGST Rules, 2017 stipulates the provisions relating to refunds. State GST laws also prescribe identical provisions in relation to refunds. Further, section 15 of the IGST Act prescribes for the refund of integrated tax paid on supply of goods to tourist leaving India.

Provisions of Refunds under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

Following provisions have been discussed in this Chapter:

<table>
<thead>
<tr>
<th>Chapter XI of CGST Act: Refunds</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section</strong></td>
</tr>
<tr>
<td>54</td>
</tr>
</tbody>
</table>

© The Institute of Chartered Accountants of India
<table>
<thead>
<tr>
<th>Section</th>
<th>Particulars</th>
</tr>
</thead>
<tbody>
<tr>
<td>55</td>
<td>Refund in certain cases</td>
</tr>
<tr>
<td>56</td>
<td>Interest on delayed refunds</td>
</tr>
<tr>
<td>57</td>
<td>Consumer Welfare Fund</td>
</tr>
<tr>
<td>58</td>
<td>Utilisation of fund</td>
</tr>
</tbody>
</table>

### Chapter VI of IGST Act: Refund of integrated tax to international tourist

<table>
<thead>
<tr>
<th>Section</th>
<th>Particulars</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>Refund of integrated tax paid on supply of goods to tourist leaving India.</td>
</tr>
</tbody>
</table>

### Chapter X of CGST Rules: Refund

<table>
<thead>
<tr>
<th>Rule</th>
<th>Particulars</th>
</tr>
</thead>
<tbody>
<tr>
<td>89</td>
<td>Application for refund of tax, interest, penalty, fees or any other amount</td>
</tr>
<tr>
<td>90</td>
<td>Acknowledgement</td>
</tr>
<tr>
<td>91</td>
<td>Grant of provisional refund</td>
</tr>
<tr>
<td>92</td>
<td>Order sanctioning refund</td>
</tr>
<tr>
<td>93</td>
<td>Credit of the amount of rejected refund claim</td>
</tr>
<tr>
<td>94</td>
<td>Order sanctioning interest on delayed refunds</td>
</tr>
<tr>
<td>95</td>
<td>Refund of tax to certain persons</td>
</tr>
<tr>
<td>96</td>
<td>Refund of integrated tax paid on goods or services exported out of India</td>
</tr>
<tr>
<td>96A</td>
<td>Export of goods or services under bond or Letter of Undertaking</td>
</tr>
<tr>
<td>97</td>
<td>Consumer Welfare Fund</td>
</tr>
<tr>
<td>97A</td>
<td>Manual filing and processing</td>
</tr>
</tbody>
</table>

Before proceeding into detailed provisions of the chapter, let us first go through the relevant definitions.
2. RELEVANT DEFINITIONS

- **Refund**: Refund includes 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 unutilised input tax credit as provided under section 54(3) [Explanation 1 to section 54 of the CGST Act].

- **Tourist**: “Tourist” means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes [Explanation to section 15 of the IGST Act].

- **Zero rated supply**: Zero-rated supply shall have the meaning assigned to it in section 16 [Section 2(23) of the IGST Act]. As per section 16(1) of IGST Act, “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.

- **Recipient of goods or services**: “Recipient” of supply of goods or services or both, means—
  
  (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
  
  (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
  
  (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

  and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93) of CGST Act].
3. **REFUND OF TAX [SECTION 54 OF THE CGST ACT]**

### A. Situations leading to refund claims

A claim for refund may arise in the following situations:

(i) **Export/supply to SEZ developer/unit on payment of IGST**

In case where goods and/or services are exported or, goods and/or services are supplied to an SEZ developer/unit, **on payment of IGST**, subject to such conditions, safeguards and procedure as may be prescribed, refund of such IGST paid on goods and/or services supplied is available [Section 16(3)(b) of IGST Act].

(ii) **Refund of unutilized ITC** – In case of export/supply to SEZ developer/unit **without payment of IGST** or inverted duty structure, refund of unutilized ITC is available.

(iii) Refund of tax paid on the supply of goods regarded as deemed exports may be claimed.

(iv) Refund of any balance in the electronic cash ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made there under may be claimed [Section 49(6)].

(v) Refund on account of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued (tax paid on advance payment).

(vi) Refund of tax wrongly collected and paid to the Government (i.e. CGST & SGST paid by treating the supply as intra-State supply which is subsequently held as inter-State supply and vice versa) [Section 77 of the CGST Act and section 19 of the IGST Act].

(vii) Refund of the IGST paid by tourist leaving India on any supply of goods taken out of India by him [Section 15 of IGST Act].

(viii) Tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any Court.

© The Institute of Chartered Accountants of India
15.6 GOODS AND SERVICES TAX

(ix) On finalization of provisional assessment, if any tax becomes refundable to taxpayer (on account of assessed tax on final assessment being less than the tax deposited by the taxpayer) [Section 60].

(x) Refund of taxes on purchases made by UN bodies or embassies etc. [Section 54(2)].

The list is only indicative and not exhaustive. Detailed provisions relating to some of the sections referred above have been discussed in the other chapters at respective places.

B. Application for refund claim [Rule 89]

1. Application Form for claiming refund

- Any person\(^1\) claiming refund of any tax, interest, penalty, fees or any other amount paid by him may file an application in Form GST RFD-01 electronically through GST common portal [Rule 89(1)].

- However, in case of refund of IGST paid on goods exported out of India, there is no need for filing a separate refund claim in refund application Form GST RFD 01 since the shipping bill filed by the exporter is itself treated as a refund claim. The provisions relating to refund of IGST on export of goods outside India have been discussed in detail subsequently in this chapter.

- Further, a registered person claiming refund of any balance in the electronic cash ledger in accordance with the provisions of section 49(6), may claim such refund through the return furnished for the relevant tax period under section 39 in Form GSTR-3/Form GSTR-4/Form GSTR-7**, as the case may be. Such return furnished shall be deemed to be a

\(^1\) except the persons covered by notification issued under section 55 like UN Bodies, Embassies etc.
refund claim filed under section 54 [Proviso to section 54(1) read with first proviso to rule 89(1)].

**Presently, the application for refund of balance in the Electronic Cash Ledger is also being filed in Form GST RFD-01A. While filing refund application, the applicant needs to select the reason of refund as ‘Refund on account of excess balance in cash ledger’. Thereafter, the balance amount available in Electronic Cash Ledger is auto-populated in said refund application. The applicant enters the amount of refund to be claimed and Electronic Cash Ledger is debited for the amount claimed as refund.**

**Filing of refund claim:**

- **Supplies regarded as deemed exports:** In respect of supplies regarded as deemed exports, either recipient or supplier are allowed to file the refund application. The supplier can seek refund only in case where the recipient does not avail of ITC on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund [Third proviso to rule 89(1)].

- **Supplies to a Special Economic Zone unit or a Special Economic Zone developer:** In respect of supplies to a SEZ unit/developer, the application for refund shall be filed by the -
  
  (a) Supplier of goods after such goods have been admitted in full in the SEZ for authorised operations, as endorsed by the specified officer of the Zone.
  
  (b) Supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of SEZ [Second proviso to rule 89(1)].

- **Supplies by Casual taxable person (CTP) /Non-resident taxable person (NRTP):** The amount of advance tax deposited by a casual taxable person or a non-resident taxable person under section 27(2), shall be refunded only when such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39 [Section 54(13)].
Further, refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him [Fourth proviso to rule 89(1)].

2. **Time limit within which refund claim can be filed**

Any person claiming refund of any tax, interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of **2 years from the ‘Relevant Date’** in prescribed form and manner [Section 54(1)].

**Meaning of ‘Relevant Date’ [Explanation 2 to section 54]**

‘Relevant Date’ has been defined in Explanation 2 to section 54. Accordingly it means:-

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Cases</th>
<th>Relevant Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>In case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs/input services used in such goods and</td>
<td></td>
</tr>
</tbody>
</table>
### REFUNDS

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Date Calculations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>(i) goods are exported by sea or air</td>
<td>date on which the ship or the aircraft in which such goods are loaded, leaves India</td>
</tr>
<tr>
<td></td>
<td>(ii) goods are exported by land</td>
<td>date on which such goods pass the frontier</td>
</tr>
<tr>
<td></td>
<td>(iii) goods are exported by post</td>
<td>date of dispatch of goods by the Post Office concerned to a place outside India</td>
</tr>
</tbody>
</table>

2. **In 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, and

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Date Calculations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(i) the supply of services had been completed prior to the receipt of such payment</td>
<td>Date of receipt of payment in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India</td>
</tr>
<tr>
<td></td>
<td>(ii) payment for the services had been received in advance prior to the date of issue of the invoice</td>
<td>Date of issue of invoice</td>
</tr>
</tbody>
</table>

3. **In case of supply of goods regarded as deemed exports** where a refund of tax paid is available in respect of the goods

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Date Calculations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Date on which the return relating to such deemed exports is furnished</td>
<td></td>
</tr>
</tbody>
</table>

4. Where tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal/any court

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Date Calculations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Date of communication of such judgment, decree, order or direction</td>
<td></td>
</tr>
</tbody>
</table>
### 15.10 GOODS AND SERVICES TAX

<table>
<thead>
<tr>
<th></th>
<th>In case of refund of unutilised ITC on account of inverted duty structure</th>
<th>Due date for furnishing of return under section 39 for the period in which such claim for refund arises</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>In the case where tax is paid provisionally under this Act/rules made thereunder</td>
<td>Date of adjustment of tax after the final assessment thereof</td>
</tr>
<tr>
<td>7</td>
<td>In the case of a person, other than the supplier</td>
<td>Date of receipt of goods or services or both by such person</td>
</tr>
<tr>
<td>8</td>
<td>Any other case</td>
<td>Date of payment of tax</td>
</tr>
</tbody>
</table>

#### 3. Documentary evidences for filing refund claim

The applicant need not file elaborate documents along with the refund claim. Standardised and easy to understand documents have been prescribed. Thus, for every claim the main document prescribed is a statement of relevant invoices/shipping bills (NOT THE INVOICES ITSELF) pertaining to the claim.

Documentary evidences required for filing refund claim has been provided under the provisions of section 54(4) read with rule 89(2).

**Section 54(4)**

Section 54(4) of the CGST Act stipulates that the application shall be accompanied by —

(a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

(b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that there is no unjust enrichment (i.e. 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
REFUNDS

paid by, him and the incidence of such tax and interest had not been passed on to any other person).

However, where the amount claimed as refund is less than ₹ 2 lakh, 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, certifying that there is no unjust enrichment i.e. the incidence of such tax and interest had not been passed on to any other person.

Rule 89(2)

In pursuance of said provisions, rule 89(2) has provided that the application for filing of refund claim shall be accompanied by any of the following documentary evidences as applicable, in Annexure 1 of Form GST RFD-01 for refund claim, to establish that a refund is due to the applicant:

<table>
<thead>
<tr>
<th>In case where refund is on account of</th>
<th>Documentary evidence to be submitted</th>
</tr>
</thead>
<tbody>
<tr>
<td>A judgment, decree, order/direction of Appellate Authority, Appellate Tribunal/any Court</td>
<td>Copy of the order passed by the proper officer or an Appellate Authority or Appellate Tribunal or Court resulting in such refund or reference number of the payment of the amount specified in section 107(6) and section 112(8) claimed as refund (i.e. amount to be deposited at the time of filing of appeal before Appellate Authority or Appellate Tribunal).</td>
</tr>
<tr>
<td>export of services</td>
<td>statement containing the number and date of invoices and the relevant Bank Realization Certificates or Foreign Inward Remittance Certificates (BRC/FIRC), as the case may be</td>
</tr>
<tr>
<td>export of goods</td>
<td>a statement containing the number and date of shipping bills or bills of export and the number and date of relevant export invoices. It is important to note that realization of convertible foreign exchange or Indian Rupees wherever permitted by RBI is one of the conditions for export of services whereas in case of export of goods, realization of</td>
</tr>
<tr>
<td>Goods and Services Tax</td>
<td>Consideration is not a pre-condition. Consequently, documentary evidence in the form of a statement containing no. and date of relevant BRCs/FIRCs are not required here.</td>
</tr>
<tr>
<td>------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Supply of goods is made to a SEZ unit or a SEZ developer</td>
<td>Statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding goods admitted in full for authorized operations as endorsed by the specified officer of SEZ.</td>
</tr>
<tr>
<td>Supply of services made to a SEZ unit or a SEZ developer</td>
<td>Statement containing the number and date of invoices, the evidence regarding receipt of services for authorized operations as endorsed by the specified officer of SEZ, and the details of payment, along with proof thereof, made by the recipient to the supplier for authorized operations as defined under the SEZ Act, 2005.</td>
</tr>
<tr>
<td>Deemed exports</td>
<td>Statement containing the number and date of invoices along with an: (i) acknowledgment by the jurisdictional Tax officer of the Advance Authorisation (AA) holder or Export Promotion Capital Goods (EPCG) Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said AA/EPCG Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient EOU that said deemed export supplies have been received by it. (ii) undertaking by the recipient of deemed export supplies that no ITC on such supplies has been availed of by him.</td>
</tr>
</tbody>
</table>

---

2 Circular No. 37/11/2018-GST dated 15.03.2018
### REFUNDS

<table>
<thead>
<tr>
<th>Description</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>(iii) undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund³.</td>
<td></td>
</tr>
<tr>
<td>refund of any unutilised ITC accumulated on account of inverted duty structure</td>
<td>a statement containing the number and the date of the invoices received and issued during a tax period</td>
</tr>
<tr>
<td>finalisation of provisional assessment</td>
<td>reference number of the final assessment order and a copy of the said order</td>
</tr>
<tr>
<td>tax wrongly collected and paid to the Government</td>
<td>Statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply</td>
</tr>
<tr>
<td>excess payment of tax</td>
<td>Statement showing the details of the amount of claim on account of excess payment of tax</td>
</tr>
</tbody>
</table>

#### Note - Documentary evidence pertaining to passing of incidence of tax

Further, a declaration needs to be furnished to establish that there is no unjust enrichment in the case of the applicant⁴, in a case **where the amount of refund claimed does not exceed ₹2 lakh**.

However, **where the amount of refund claimed exceeds ₹2 lakh**, a Certificate in Annexure 2 of Form GST RFD-01 by a Chartered Accountant or a Cost Accountant to the effect that there is no unjust enrichment in the case of the applicant.

---

³ Notification No. 49/2017 CT dated 18.10.2017

⁴ Establishing that there is no unjust enrichment means establishing that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person. This concept has been discussed in detail later in this chapter.
Further, **neither a declaration by the applicant nor a certificate by a Chartered Accountant/Cost Accountant** is required to be furnished in the following cases:

(a) refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports;

(b) refund of unutilised ITC in case of zero rated supplies made without payment of tax or on account of inverted duty structure;

(c) 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. *The expression “invoice” referred here means invoice conforming to the provisions contained in section 31*.

(d) refund of tax in pursuance of section 77, i.e. tax paid on a transaction treating it as an intra-State supply, but which is subsequently held to be an inter-State supply or vice-versa.

(e) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

### C. Procedure on receipt of refund claim

1. **Acknowledgment of refund claim [Rule 90]**

   I. Where the application relates to:

   (a) **Claim for refund from the electronic cash ledger:**

   An acknowledgment in prescribed form shall be made available to the applicant, clearly indicating the date of filing of the claim for refund [Rule 90(1)].

---

5. Provisions relating to ‘invoice’ have been discussed in detail in Chapter 10 – Tax Invoice; Credit and Debit Notes

6. through the Common Portal electronically

© The Institute of Chartered Accountants of India
(b) Other refund claims:

- The application shall be forwarded to the proper officer.
- The proper officer shall, within a period of 15 days of filing of the said application, scrutinize the application for its completeness.
- Where the application is found to be complete in terms of rule 89, an acknowledgement in prescribed form shall be made available to the applicant through the common portal electronically [Rule 90(2)].

Refund acknowledgment clearly indicates the date of filing of the claim for refund. Refund order is required to be issued within 60 days from the date of filing claim for refund as mentioned in said acknowledgment.

II. Deficiencies in refund claim – Issuance of Deficiency Memo:

- Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in Deficiency memo\(^7\), requiring him to file a fresh refund application after rectification of such deficiencies [Rule 90(3)].

- Where deficiencies have been communicated to applicant under the SGST Rules, 2017, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under CGST Rules, 2017 [Rule 90(4)].

2. Grant of provisional refund [Section 54(6) read with rule 91]

GST law provides for grant of provisional refund of 90% of the total refund claim, in case the claim relates for refund arising on account of zero rated supplies. The provisional refund would be paid within 7 days after giving the acknowledgement. The remaining 10% can be refunded later after due verification of documents furnished by the applicant. The provisional refund would not be

\(^7\) through the Common Portal electronically
granted to such supplier who was, during any period of 5 years immediately preceding the refund period, was prosecuted.

Detailed provisions have been outlined hereunder:

Section 54(6) stipulates that:

- The proper officer may, in the case of any claim for **refund on account of zero-rated supply of goods or services or both** made by registered persons,

- **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, 90% of the total amount so claimed**, excluding the amount of ITC provisionally accepted

- in such manner and subject to such **conditions, limitations and safeguards as may be prescribed** and

- thereafter make an order under section 54(5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

**Conditions, limitations and safeguards** have been prescribed under rule 91 of the CGST Rules, 2017. It stipulates as following:

- The provisional refund shall be granted subject to the condition that the person claiming refund has, during any period of 5 years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law **where the amount of tax evaded exceeds ₹ 2.5 crores**.

- The proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being **prima facie** satisfied that the amount claimed as refund is due to the applicant in accordance with the provisions of section 54(6), shall make an order in prescribed form, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding 7 days from the date of the acknowledgement.

*However, said order shall not be required to be revalidated by the proper officer.*

- The proper officer shall issue a payment advice for the amount sanctioned. The same shall be electronically credited to any of the
bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

**However, the payment advice shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment advice was issued.**

3. **Order of refund [Section 54(5), (7) read with rule 92]**

- Section 54(5) stipulates that if, on receipt of any such application, the proper officer is satisfied that the whole/part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Consumer Welfare Fund [*discussed in detail subsequently*].

- However, in certain specified circumstances, the refundable amount is to be paid to the applicant instead of being credited to the Consumer Welfare Fund [Section 54(8)] – *Discussed in detail subsequently*.

- **Refund order:** Rule 92(1) provides that
  - where, upon examination of the application, the proper officer is satisfied that a refund under section 54(5) is due and payable to the applicant,
  - he shall make an order sanctioning the amount of refund to which the applicant is entitled,
  - mentioning therein the (i) amount, if any, refunded to him on a provisional basis, (ii) amount adjusted against any outstanding demand[^8] and (iii) the balance amount refundable.

**Amount of refund completely adjusted against any outstanding demand:** In cases where the amount of refund is completely adjusted against any outstanding demand, an order giving details of the adjustment shall be issued [Proviso to rule 92(1)].

- **Where the proper officer is satisfied that the amount refundable under rule 92(1)/(2)[^9] is payable to the applicant[^10]** instead of being credited to Consumer Welfare Fund, he shall make an order in

[^8]: under the Act or under any existing law
[^9]: Rule 92(2)- withholding of refund - has been discussed subsequently
[^10]: under section 54(8)
prescribed form and issue a payment advice for the amount of refund.

Amount of refund shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

The order issued in prescribed form shall not be required to be revalidated by the proper officer.

However, the payment advice shall be required to be revalidated where the refund has not been disbursed within the same financial year in which the said payment advice was issued [Rule 92(4)].

Where the proper officer is satisfied that the amount refundable under rule 92(1)/(2) is not payable to the applicant, he shall make a refund order and issue an advice for the amount of refund to be credited to the Consumer Welfare Fund [Rule 92(5)].

Time-limit for issuance of refund order: Refund order shall be issued by the proper officer within 60 days from the date of receipt of application complete in all respects [Section 54(7)].

The time limit of 60 days shall be counted from the date of filing claim for refund as mentioned in the acknowledgment received for refund claim [Section 54(7) read with rule 90(1) and 90(2)].

4. Issue of SCN and rejection of refund claim [Rule 92(3)]

In case the claim is sought to be rejected by the proper officer, a notice has to be given online to the applicant stating the ground on which the refund is sought to be rejected. The applicant needs to respond online within 15 days from the receipt of such notice. Thus, no claim can be rejected without putting the applicant to notice. The detailed provisions have been discussed hereunder:

11 under section 54(8)
Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice to the applicant in prescribed form.

Applicant will be required to furnish a reply within 15 days of the receipt of such notice in prescribed form.

The proper officer shall, after considering the reply furnished by applicant and after giving him an opportunity of being heard, make an order, sanctioning the amount of refund in whole or part, or rejecting the said refund claim.

The said order shall be made available to the applicant electronically and the provisions of rule 92(1) relating to order sanctioning refund shall, mutatis mutandis, apply to the extent refund is allowed.

No application for refund shall be rejected without giving the applicant an opportunity of being heard.

5. **Withholding of refund claim [Section 54(10), (11) & (12)]**

Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this 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 till such time as he may determine.

The detailed provisions are as under:

Rule 92(2) stipulates that where the proper officer/Commissioner is of the opinion that the amount of refund is liable to be withheld under the provisions of section 54(10)/(11), he passes an order informing the applicant the reasons for withholding of such refund.

**Section 54(10)** stipulates that where any refund of unutilized ITC is due in case of zero rated supplies made without payment of tax or inverted duty structure, to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any Court, Tribunal or Appellate
Authority by the specified date**, the proper officer may:

(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

**Specified date** shall mean the last date for filing an appeal under this Act.

*Section 54(11) stipulates 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 this 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 till such time as he may determine.

However, where a refund is withheld under section 54(11), the taxable person shall, notwithstanding anything contained in section 56, be entitled to interest @ 6% p.a.* if as a result of the appeal or further proceedings he becomes entitled to refund [Section 54(12)].

*as notified vide Notification No. 13/2017 CT dated 28.06.2017

6. **Credit of the amount of rejected refund claim [Rule 93]**

- Where any deficiencies in refund claim have been communicated under rule 90(3) [Rule 90(3) is discussed earlier], the amount earlier debited under rule 89(3) shall be re-credited to the electronic credit ledger [Rule 93(1)].

- Where any amount claimed as refund is rejected under rule 92, 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 prescribed form [Rule 93(2)].

- For the purposes of this rule, a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal [Explanation to rule 93].
D. Principal of Unjust Enrichment [Section 54(8), (8A) & (9)]

1. Theory of unjust enrichment

- ‘Unjust enrichment’ means retention of a benefit by a person that is unjust or inequitable. ‘Unjust enrichment’ occurs when a person retains money or benefits which in justice, equity and good conscience, belong to someone else.

This principle stipulates that no person can be allowed to enrich inequitably at the expense of another. A right of recovery under the doctrine of ‘unjust enrichment’ arises where retention of a benefit is considered contrary to justice or against equity.\(^ {12} \)

- Theory of unjust enrichment, under GST, postulates that only the person who has NOT passed the incidence of tax will be eligible to claim the refund. Where the amount of tax has been recovered from the recipient, it shall be deemed that ‘THE INCIDENCE OF TAX HAS BEEN PASSED ON TO THE ULTIMATE CONSUMER’. [Explanation (ii) to rule 89]

- Under unjust enrichment, a presumption is always drawn that the businessman will shift the incidence of tax to the final consumer. This is because GST is an indirect tax whose incidence is to be borne by the consumer. It is for this reason that every refund claim if sanctioned is first transferred to the Consumer Welfare Fund.

- If the claim of refund (barring specified exceptions) passes the test of unjust enrichment, it is paid to the applicant. The GST law makes this test inapplicable in case of refund of unutilized ITC, refund on account of exports, refund of payment of wrong tax (IGST instead of CGST + SGST and vice versa), refund of tax paid on a supply, which is not provided or when refund voucher is issued or if the applicant shows that he has not passed on the incidence of tax to any other person [‘These cases have been given in detail in next point’]. In all other cases, the test of unjust enrichment needs to be satisfied for the claim to be paid to applicant.

---

\(^ {12} \) Sahakari Khand Udyog Mandal Ltd. v. Commissioner of Central Excise & Customs 2005 (181) ELT 328 S.C
As discussed earlier, for crossing the bar of unjust enrichment, if the refund claim is up to ₹ 2 lakh, then a self-declaration of the applicant to the effect that the incidence of tax has not been passed to any other person will suffice to process the refund claim. For refund claims exceeding ₹ 2 lakh, a certificate from a Chartered Accountant/Cost Accountant will have to be given.

2. Cases where theory of unjust enrichment is inapplicable

Section 54(8) stipulates that the refundable amount shall, instead of being credited to the Consumer Welfare Fund, be paid to the applicant, if such amount is relatable to —

(a) refund of tax paid on exports of goods or services or both or on inputs or input services used in making such exports;

(b) refund of unutilized ITC in case of zero rated supplies made without payment of tax or accumulated ITC on account of inverted duty structure;

(c) 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;

(d) refund of tax in pursuance of section 77, i.e. tax paid on a transaction treated to be an intra-State supply, but which is subsequently held to be an inter-State supply or vice-versa;

(e) 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

(f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

The Government may disburse the refund of the State tax in such manner as may be prescribed [Section 54(8A)]

Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in

---

13 Inserted by the Finance (No. 2) Act, 2019 with effect from 01.09.2019.
any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of section 54(8). Instead, refundable amount shall be credited to Consumer Welfare Fund [Section 54(9)].

### E. Refund of unutilized ITC

The provisions relating to refund of unutilized ITC have been compiled and discussed as under:

#### 1. Accumulation of Input Tax Credit (ITC)

Accumulation of Input Tax Credit (ITC) 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 FY 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 at the end of a tax period 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. In such cases, the Electronic Credit Ledger is to be debited by the applicant by an amount equal to the refund so claimed [Rule 89(3)].

#### 2. Cases where refund of unutilized ITC is available

As per section 54(3), a registered person may claim refund, of any unutilised ITC at the end of any tax period\(^\text{\textsuperscript{14}}\), in the following cases:

(a) **Zero rated supplies without payment of tax:** Supply of goods and/or services to an SEZ developer/unit or export of goods and/or services under bond or Letter of Undertaking (LUT) without payment of IGST, subject to such conditions, safeguards and procedure as may be prescribed, are zero rated supplies without payment of tax. In such cases, refund of unutilised ITC at the end of any tax period, of amount determined under rule 89(4), shall be granted to the applicant and the the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.

\(^{14}\text{A tax period is the period for which return is required to be furnished [Section 2(106) of CGST Act].}\)
(b) **Inverted duty structure:** The term ‘**Inverted duty structure**’ refers to a situation where the rate of tax on inputs is higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies). As a result, the higher tax paid on inputs gets accumulated in the Electronic Credit Ledger of the taxpayer.

Suppliers who supply goods to merchant exporters at the concessional rate of 0.1% [0.05% CGST and 0.05% SGST/UTGST or 0.1% IGST, as the case may be], under Notification no. 40/2017 CT (R) dated 23.10.2017/Notification No. 41/2017 IT (R) dated 23.10.2017, subject to certain conditions specified in said notifications [Discussed in detail in Chapter 14 – Import and Export under GST], are also eligible for refund on account of inverted tax structure.

**Supply of specified goods/services where refund of unutilized ITC on account of inverted duty structure is NOT allowed:** Government may, on the recommendations of the Council, notify supplies of certain goods or services or both where no refund of unutilized ITC on account of inverted duty structure is allowed.

For instance, supply of construction of complex services specified in para 5(b) of Schedule II of the CGST Act, rail locomotives powered from an external source of electricity or by electric accumulators.

However, it is clarified that this restriction on refund of unutilized ITC of GST paid on inputs is not applicable in case of zero rated supply of specified goods or services, i.e. (a) exports of said goods or services or both; or (b) supply of said goods or services or both to a SEZ developer/unit [Circular No. 18/18/2017 GST dated 16.11.2017].

3. **Application Form for claiming refund**
   The application for refund in such cases shall be filed in Form RFD-01.

4. **Time-limit for claiming refund**
   Refund claim in such cases is required to be filed within 2 years from the due date for furnishing of return under section 39 for the period in which such claim for refund arises.

---

15 Notification No. 15/2017 CT (R) dated 28.06.2017 and Notification No. 5/2017 CT (R) dated 28.06.2017. Examples given herein are only for information purpose.
5. **Doctrine of unjust enrichment not applicable**

In such cases, the refundable amount shall, instead of being credited to the **Consumer Welfare Fund**, be paid to the applicant. In other words, doctrine of unjust enrichment is not applicable in these cases.

6. **Amount to be claimed as refund**

   (i) **Rule 89(4)** stipulates that in the case of **zero-rated supply of goods or services or both** without payment of tax under bond/LUT in accordance with the provisions of section 16(3) of the IGST Act, 2017, refund of ITC shall be granted as per the following formula:

   \[
   \text{Refund Amount} = \frac{(\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services})}{\text{Adjusted Total Turnover}} \times \text{Net ITC}
   \]

   where,-

   A. **"Refund amount"** means the maximum refund that is admissible;

   B. **"Net ITC"** means ITC availed on inputs (see “Clarification on the term input” given below) and input services during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (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/LUT, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (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 LUT, 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
GOODS AND SERVICES TAX

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 sum total of the value of:

(a) the turnover in a State or a Union territory, as defined under section 2(112), excluding turnover of services; &

(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

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

(ii) Rule 89(4A) stipulates that in the case of supplies received on which the supplier has availed the benefit of deemed exports, refund of ITC, availed in respect of other inputs/input services used in making zero-rated supply of goods or services or both, shall be granted.

(iii) Rule 89(4B) stipulates that where the person claiming refund of unutilised ITC on account of zero rated supplies without payment of tax has –

(a) received supplies on which the manufacturer supplier has availed the benefit of supply of goods to merchant exporters at the concessional rate of 0.1%, or

---

16 under Notification No. 48/2017 CT dated 18.10.2017 [discussed in detail in Chapter 14 – Import and Export under GST]

17 Notification Nos. 41/2017 IT(R) or 40/2017 CT(R) both dated 23.10.2017. These export benefits have been explained in detail in Chapter 14 – Import and Export under GST.
(b) availed the benefit of exemption from IGST and Compensation Cess, for the goods imported by EOU\textsuperscript{18} or for the goods imported under Advance Authorisation (AA)/ EPCG\textsuperscript{19}, the refund of ITC, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.

(iv) Rule 89(5) of the CGST Rules, 2017 stipulates that in the case of refund on account of inverted duty structure, refund of ITC shall be granted as per the following formula -

$$\text{Maximum Refund Amount} = \frac{\text{Turnover of inverted rated supply of goods and services} \times \text{Net ITC}}{\text{Adjusted Total Turnover}} - \text{Tax payable on such inverted rated supply of goods and services.}$$

where,-

A. "Net ITC" means ITC availed on inputs during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (4B) or both (See Notes – 1 & 2 and “Clarification on the term input” given below); and

B. "Adjusted Total turnover and Relevant period" have the same meaning as assigned in sub-rule (4) above.

\textbf{Note - 1:} It may be noted that here in ‘Net ITC’, ITC availed on only inputs is covered. Since the definition of inputs\textsuperscript{20} doesn’t include services or capital goods, it is apparent here that both the law and the related rules clearly prevent the refund of tax paid on

\textsuperscript{18} under Notification No. 78/2017 Cus dated 13.10.2017. This exemption has been extended upto 31.03.2020.

\textsuperscript{19} under Notification No. 79/2017 Cus dated 13.10.2017. This exemption has been extended upto 31.03.2020.

\textsuperscript{20} under section 2(59) of the CGST Act

© The Institute of Chartered Accountants of India
input services and capital goods as part of refund of ITC accumulated on account of inverted duty structure\textsuperscript{21}.

\textbf{Note - 2:} If there are multiple inputs attracting different rates of tax, ‘Net ITC’ covers the ITC availed on all inputs in the relevant period, irrespective of their rate of tax. The calculation of refund of accumulated ITC on account of inverted tax structure, in cases where several inputs are used in supplying the final product/output, can be clearly understood with help of the following example:

(i) Suppose a manufacturing process involves the use of an input A (attracting 5% GST) and input B (attracting 18% GST) to manufacture output Y (attracting 12% GST).

(ii) The refund of accumulated ITC in the situation at (i) above, will be available under section 54(3) of the CGST Act read with rule 89(5) of the CGST Rules, which prescribes the formula for the maximum refund amount permissible in such situations.

(iii) Further assume that the claimant supplies the output Y having value of ₹ 3,000/- during the relevant period for which the refund is being claimed. Therefore, the turnover of inverted rated supply of goods and services will be ₹ 3,000/-. Since the claimant has no other outward supplies, his adjusted total turnover will also be ₹ 3,000/-. 

(iv) If we assume that Input A, having value of ₹ 500/- and Input B, having value of ₹ 2,000/-, have been purchased in the relevant period for the manufacture of Y, then Net ITC shall be equal to ₹ 385/- (₹ 25/- and ₹ 360/- on Input A and Input B respectively).

(v) Therefore, multiplying Net ITC by the ratio of turnover of inverted rated supply of goods and services to the adjusted total turnover will give the figure of ₹ 385/-. 

(vi) From this, if we deduct the tax payable on such inverted rated supply of goods or services, which is ₹ 360/-, we get the

\textsuperscript{21} Circular No. 79/ 53/ 2018 GST dated 31.12.2018
maximum refund amount, as per rule 89(5) of the CGST Rules which is ₹25/-\(^{22}\).

**Clarification on the term “input”**

On certain occasions, ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, is not considered as part of ‘Net ITC’ on the grounds that these are not directly consumed in the manufacturing process and therefore, do not qualify as input.

There are also instances where stores and spares, although charged to revenue, are considered as capital goods. Consequently, the ITC availed on them is not included in ‘Net ITC’, even though the value of these goods has not been capitalized in his books of account by the claimant.

In this regard, it is clarified that ITC of the GST paid on inputs shall be available to a registered person as long as he/she uses or intends to use such inputs for the purposes of his/her business and there is no specific restriction on the availment of such ITC anywhere else in the GST law. The GST paid on inward supplies of stores and spares, packing materials etc. shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted under section 17(5) of the CGST Act. Further, capital goods have been clearly defined in section 2(19) of the CGST Act as goods whose value has been capitalized in the books of account and which are used or intended to be used in the course or furtherance of business. Hence, stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods\(^{23}\).

8. **Cases where refund of ITC is NOT allowed**

(i) Refund of unutilized ITC shall not be allowed if the goods exported out of India are subjected to export duty.

---

\(^{22}\) Circular No. 79/53/2018 GST dated 31.12.2018

\(^{23}\) Circular No. 79/53/2018 GST dated 31.12.2018

© The Institute of Chartered Accountants of India
(ii) Refund of ITC shall not be allowed if the supplier of goods or services or both avails of drawback in respect of CGST or claims refund of the IGST paid on such supplies.

Thus, if a supplier claims refund of accumulated ITC in case of zero rated supplies without payment of tax, he can avail drawback of only basic customs duty and cannot claim drawback of any of the taxes under GST (Central Tax, Integrated Tax, State/Union Territory Tax).

In other words, a supplier availing drawback of only basic customs duty shall be eligible for refund of unutilized ITC of central tax/ State tax/ Union territory tax/ integrated tax/ compensation cess under the said provision. It is further clarified that refund of eligible credit on account of State tax shall be available even if the supplier has availed of drawback in respect of central tax [Circular No.24/24/2017 GST dated 21.12.2017 and Circular No. 37/11/2018 GST dated 15.03.2018].

<table>
<thead>
<tr>
<th>F. Minimum refund claim [Section 54(14)]</th>
</tr>
</thead>
<tbody>
<tr>
<td>No refund shall be paid to an applicant, if the amount is less than ₹ 1,000. The limit of ₹ 1,000 shall apply for each tax head separately and not cumulatively. Further, the limit would not apply in cases of refund of excess balance in the electronic cash ledger(^{24}).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>G. Refund in case of goods or services exported out of India</th>
</tr>
</thead>
<tbody>
<tr>
<td>As discussed in Chapter 14 – Import and Export Under GST, exports of goods and services are zero rated.</td>
</tr>
</tbody>
</table>

---

\(^{24}\) Circular No. 59/ 33/ 2018 GST dated 04.09.2018
The provisions relating to refund in each of the said cases have been elaborated below:

(I) **Refund on account of export of goods or services [with payment of tax] [Rule 96]**

In case where the exporter of goods or services or both opts to pay IGST at the time of export and claim refund of the IGST thereof, provisions relating to refund of IGST are as follows:

**Export of goods**

(1) **Application for refund claim:** The shipping bill/ bill of export filed by the exporter of goods shall be deemed to be an application for refund and the tax payer is not required to file separate refund application in this case.

Further, 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 a departure manifest\(^{25}\), or an export manifest or an export report covering the number and the date of shipping bills/bills of export; and

(b) the applicant has furnished a valid return in Form GSTR-3/ Form GSTR-3B.

GST portal shares the details of the relevant export invoices in respect of export of goods contained in Form GSTR-1 with the system designated by the Customs viz. ICEGATE. The said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

---

However, where the date for furnishing the details of outward supplies in Form GSTR-1 for a tax period has been extended, the supplier shall furnish the information relating to exports as specified in Table 6A of Form GSTR-1 after the return in Form GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs. Further, such information furnished in Table 6A shall be auto-drafted in Form GSTR-1 for the said tax period.

(2) **Processing of refund claim:** Upon the receipt of the information regarding the furnishing of a valid return, ICEGATE system designated by the Customs/ proper officer of Customs, shall process the claim of refund in respect of export of goods.

An amount equal to the IGST paid in respect of each shipping bill/ bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.

(3) **Withholding of refund of IGST:** The claim for refund shall be withheld where:

(a) a request has been received from the jurisdictional Commissioner of Central Tax, State Tax or Union Territory Tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of section 54(10)/(11); or

(b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.

In above case, the proper officer of integrated tax at the Customs station shall intimate the applicant and the jurisdictional Commissioner of Central Tax, State Tax or Union Territory Tax, as the case may be, and a copy of such intimation shall be transmitted to the common portal.

Upon transmission of said intimation, the proper officer of central tax or State tax or Union territory tax, as the case may be, shall pass an order in prescribed form.

Where the applicant becomes entitled to refund of the amount withheld, the concerned jurisdictional officer of central tax, State tax
or Union territory tax, as the case may be, shall proceed to refund the amount after passing an order.

(4) **Refund to the Government of Bhutan on the exports to Bhutan:**
The Central Government may pay refund of the IGST to the Government of Bhutan on the exports to Bhutan for such class of goods as may be notified in this behalf. Where such refund is paid to the Government of Bhutan, the exporter shall not be paid any refund of the integrated tax.

### Export of services

**Refund application:** The application for refund of IGST paid on the services exported out of India shall be filed in Form GST RFD-01 and shall be dealt with in accordance with the provisions of rule 89 [as discussed earlier].

<table>
<thead>
<tr>
<th>Person claiming refund of IGST paid on export of goods/services should not have:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) received supplies on which the benefit of deemed exports(^{26}) has been availed or benefit of supply of goods to merchant exporters at the concessional rate of 0.1%(^{27}) has been availed, or</td>
</tr>
<tr>
<td>(ii) availed the benefit of exemption from IGST and Compensation Cess, for goods imported by EOU(^{28}) or for goods imported under Advance Authorisation (AA)/ EPCG(^{29}).</td>
</tr>
</tbody>
</table>

**Refund of ITC paid on export of goods or services under bond or Letter of Undertaking (LUT) [Rule 96A]**

Another option available with the exporter of goods or services or both is to export under bond/LUT without payment of IGST and claim refund of ITC. The provisions relating to export of goods/services without payment of IGST under bond/LUT [Rule 96A] have already been discussed in detail in

---

\(^{26}\) under Notification No. 48/2017 CT dated 18.10.2017 [discussed in detail in Chapter 14 – Import and Export under GST]

\(^{27}\) Notification Nos. 41/2017 IT(R) or 40/2017 CT(R) both dated 23.10.2017. These export benefits have been explained in detail in Chapter 14 – Import and Export under GST.

\(^{28}\) under Notification No. 78/2017 Cus dated 13.10.2017. This exemption has been extended upto 31.03.2020.

\(^{29}\) under Notification No. 79/2017 Cus dated 13.10.2017. This exemption has been extended upto 31.03.2020.
Chapter 14 – Import and Export Under GST. Further, as already discussed, in such cases, refund of unutilised ITC at the end of any tax period, of amount determined under rule 89(4), shall be granted to the applicant and the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed [discussed earlier in detail].

4. REFUND TO UN BODIES, EMBASSIES, ETC.
[SECTION 55 READ WITH SECTION 54(2) OF CGST ACT]

Supplies made to UN bodies and embassies may be exempted from payment of GST as per international obligations. However, this exemption has been operationalized by way of a refund mechanism. So, a taxable person making supplies to such bodies would charge the tax due and remit the same to Government account.

However, the UN bodies and other entities notified under section 55 of the CGST Act, 2017 can claim refund of the taxes paid by them on their purchases. The claim has to be made before the expiry of 6 months [increased to ‘18 months’ 30 In exercise of power granted under section 148] from the last day of the quarter in which such supply was received. Detailed provisions have been discussed hereunder:

A. Who is entitled to refund under section 55?

Government may, on the recommendations of the Council, by notification, specify:

(i) any specialised agency of the United Nations Organisation; or

(ii) any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947; or

(iii) Consulate or Embassy of foreign countries; and

(iv) any other person or class of persons as may be specified in this behalf, who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified inward supplies of goods or services or both received by them.

30 Notification No. 20/2018 CT dated 28.03.2018
In exercise of above power, following persons have been notified, subject to fulfilment of specified conditions:

(i) United Nations or a specified international organization**; and

(ii) Foreign diplomatic mission or consular post in India, or diplomatic agents or career consular officers posted therein31.

**Specified international organisation means an international organisation declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities Act) 1947, to which the provisions of the Schedule to the said Act apply.

Further, in exercise of said power, Canteen Stores Department (CSD), under the Ministry of Defence, has been notified as a person who shall be entitled to claim a refund of 50% of the applicable CGST/IGST paid by it on all inward supplies of goods received by it for the purposes of subsequent supply of such goods to the Unit Run Canteens of the CSD or to the authorized customers of the CSD32.

B. **Time Limit for filing refund claim [Section 54(2) read with rule 95(1)]

Persons eligible to claim refund under section 55 [as mentioned in point A. above], entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, once in every quarter, but before the expiry of 6 months [increased to ‘18 months’] from the last day of the quarter in which such supply was received.

C. **Form and documents for filing the refund claim [Rule 95(1)]

Persons eligible to claim refund under section 55 shall submit the application for refund:

31 Notification No. 16/2017 CT (R) dated 28.06.2017/ Notification No. 13/2017 IT (R) dated 28.06.2017
32 Notification No. 6/2017 CT (R) dated 28.06.2017/ Notification No. 6/2017 IT (R) dated 28.06.2017

© The Institute of Chartered Accountants of India
in a different prescribed form, once in every quarter

along with a Statement of the Inward Supplies of goods or services or both in Form GSTR-11 [discussed in detail in Chapter 13- Returns].

D. Acknowledgment for refund claim [Rule 95(2)]

An acknowledgement for receipt of the application for refund shall be issued in a prescribed form.

E. Conditions to be satisfied for sanction of refund [Rule 95(3) & (4)]

Refund of tax paid by the applicant shall be available if all the following conditions are satisfied-

(a) the inward supplies of goods or services or both were received from a registered person against a tax invoice.

(b) name and GSTIN/UIN of the applicant is mentioned in the tax invoice.

(c) such other restrictions or conditions as may be specified in the notification are satisfied.

The provisions of rule 92, as discussed earlier in this chapter shall, mutatis mutandis, apply for the sanction and payment of refund under this rule.

F. Supremacy provision in case of inconsistency [Rule 95(5)]

Where an express provision in a treaty or other international agreement, to which the President or the Government of India is a party, is inconsistent with the provisions of these rules, such treaty or international agreement shall prevail.

5. INTEREST ON DELAYED REFUNDS [SECTION 56 OF CGST ACT]

A. Interest on amount refundable consequent to order passed by Proper Officer under section 54(5)

Where any tax ordered to be refunded under section 54(5) to any applicant is not refunded within 60 days from the date of receipt of application under section 54(1), interest shall be payable to the applicant.

Interest is payable on such refund @ 6% p.a.*

33 electronically or otherwise on the common portal

© The Institute of Chartered Accountants of India
Interest is payable to the applicant from the date immediately after the expiry of 60 days from the date of receipt of application under the section 54(1) till the date of refund of such tax [Section 56 of CGST Act].

*as notified vide Notification No. 13/2017 CT dated 28.06.2017

B. **Interest on amount refundable consequent to order passed in an appeal or further proceedings**

- Where any claim of refund arises from an order passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or Court which has attained finality and the same is **not refunded within 60 days from the date of receipt of application** filed consequent to such order, interest shall be payable on such refund.

- Interest is **payable on such refund @ 9% p.a.***.

- Interest is payable from the date immediately after the expiry of 60 days from the date of receipt of application till the date of refund. [Proviso to Section 56 of CGST Act].

*as notified vide Notification No. 13/2017 CT dated 28.06.2017

**For the purpose of this section, the order of refund made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under section 54(5), shall also be deemed to be an order passed under the said section 54(5) [Explanation to section 56].**

C. **Order sanctioning interest on delayed refunds** [Rule 94]

- Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment advice in prescribed form.

- Such order shall specify therein:
  - the **amount of refund** which is delayed,
  - the **period of delay** for which interest is payable and
  - the **amount of interest** payable.

- Such interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.
6. CONSUMER WELFARE FUND [SECTIONS 57 & 58 OF CGST ACT]

Consumer Welfare Fund was created to promote and protect the welfare of consumer, create consumer awareness and strengthen consumer movement in the country, particularly in rural areas. Amount of refund which is not payable to the applicant is credited to the Consumer Welfare Fund.

As already discussed in this chapter, amount of refund is paid to the applicant in case where there is no unjust enrichment; i.e. the incidence of tax has not been passed by the supplier to the recipient as also in the circumstances where the principle of unjust enrichment is not applicable [specified in section 54(8)]. Otherwise, the said amount is credited to the Consumer Welfare Fund.

A. Amount to be credited to Consumer Welfare Fund

Section 57 of the CGST Act stipulates that the Government shall constitute a Fund, to be called the Consumer Welfare Fund and there shall be credited to the Fund:

(a) Amount of refund determined by an order passed under section 54(5),
(b) any income from investment of the amount credited to the Fund; and
(c) such other monies received by it,

in such manner as may be prescribed. Such manner has been prescribed under rule 97 of the CGST Rules, 2017.

B. Amounts to be credited to/paid from Consumer Welfare Fund [Rule 97 of the CGST Rules, 2017]

- All amounts of duty CGST/ SGST/ IGST/ UTGST/ cess and income from investment along with other monies specified in section 12C(2) of the erstwhile Central Excise Act, 1944, section 57 of the CGST Act, 2017 read with section 20 of the IGST Act, 2017, section 21 of the UTGST Act, 2017 and section 12 of the GST (Compensation to States) Act, 2017 shall be credited to the Fund [discussed earlier in this chapter] [Rule 97(1)].

- An amount equivalent to 50% of the amount of IGST determined under section 54(5) of the CGST Act, read with section 20 of the IGST Act, shall be deposited in the Fund [Proviso to rule 97(1)].

- An amount equivalent to 50% of the amount of compensation cess determined under section 54(5) of the CGST Act, read with section 11
of the GST (Compensation to States) Act, shall be deposited in the Fund. [Second Proviso to rule 97(1)]

- Any amount, having been credited to the Consumer Welfare Fund, ordered or directed as payable to any claimant by orders of the proper officer, Appellate Authority or Appellate Tribunal or Court, shall be paid from the Fund [Rule 97(2)].

C. Utilisation of Consumer Welfare Fund [Section 58 of the CGST Act, 2017 read with rule 97 of the CGST Rules, 2017]

- All sums credited to the Consumer Welfare Fund shall be utilised by the Government for the welfare of the consumers in such manner as may be prescribed [Section 58(1) of the CGST Act].

- The Government shall, by an order, constitute a Standing Committee who shall make recommendations for proper utilisation of the money credited to the Consumer Welfare Fund for welfare of the consumers [Rule 97(4)].

7. REFUND OF INTEGRATED TAX PAID ON SUPPLY OF GOODS TO TOURIST LEAVING INDIA [SECTION 15 OF IGST ACT]

- The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.

- The term “tourist” means a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes.

Manual filing and processing

Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules [Rule 97A].
TEST YOUR KNOWLEDGE

1. Is there any time limit for sanctioning of refund under section 54 of the CGST Act, 2017?

2. Discuss the provisions relating to refund of the amount of advance tax deposited by a casual taxable person under section 27(2) of the CGST Act, 2017.

3. In case of refund under exports of goods, whether BRC/FIRC is necessary for granting refund?

4. When is a deficiency memo issued in respect of a refund claim made under section 54?

5. State the exceptions to the principle of unjust enrichment as applicable to refund claims.

ANSWERS/ HINTS

1. 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 @ 6% p.a. 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.

2. The amount of advance tax deposited by a casual taxable under section 27(2), shall be refunded only when such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39 [Section 54(13)]. Further, refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him [Fourth proviso to rule 89(1)].

3. In case of refund on account of export of goods, the refund rules do not prescribe BRC/FIRC as a necessary document for filing of refund claim. However, for export of services details of BRC/FIRC is required to be submitted along with the application for refund.
4. Rule 90(3) of the CGST Rules provides for communication in prescribed form (deficiency memo) where deficiencies are noticed. The said sub-rule also provides that once the deficiency memo has been issued, the claimant is required to file a fresh refund application after the rectification of the deficiencies.

5. The principle of unjust enrichment is applicable in all cases of refund except in the following cases:
   i. Refund of tax paid on export of goods or services or both or on inputs or input services used in making such exports.
   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.