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L&S GSTtrack

an e-update on GST from **Lakshmikumaran** & **Sridharan**

Business Processes for GST: Refund Process

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Refund Snippets

- A new Refund scheme called **Tax Refund for International Tourists ('TRT')** to provide refund of GST paid in India (Para 10).
- **Zero rating of the exports** provided (Para 2).
- The option of paying service tax on exported services and claiming **rebate of output tax** is brought back again in GST regime (Para 2).
- Thrust on **computerization** of the entire refund process. GSTN to be integrated with ICEGATE to expedite the cross verification. Powers have been entrusted to authorities for **Manual verification.** (Para 2).
- Refund needs to be filed with both **Central Government ('CG')** and **State Government ('SG')**. Since only IGST would be paid on export, rebate involves interaction with CG only. (Para 2).
- Refund on **export of goods is not contingent** upon furnishing **Bank Realization Certificate ('BRC')** (post refund furnishing required). However, refund on **export of services is contingent** upon the **BRC**. In case software is classified as goods, documents required to prove export of goods (Let Export Order) may not be generated at all. **Classification** as good or services will be prone to disputes.(Para 2).
- The report does not cover the refund of **1% Additional tax,** mechanism for **area based exemption** and **Excise duty exemption certificate schemes** (Para 18).
- The 122nd Constitutional Amendment Bill ('CAB') **does not separately provide for levy of IGST on export** deeming the transaction as inter-state. The Parliament can legislate under **Entry 97 of the Union List** to levy IGST on exports (Para 2).The condition of **unjust enrichment** may defeat the benefit envisaged by the Credit/ Debit note adjustment mechanism provided for **year-end or volume based incentives** (Para 9). **Discretionary powers** retained in the hands of authorities sanctioning the refund claim. Change in infrastructure must be supported by change in attitude.
- Proposal to **distribute taxes to the ultimate consuming State** in case of credit chain break due to tax exemption. Though is line with GST principles, may require Taxpayers to **capture and maintain records** on consumption of final products and raw materials used in the manufacture of the same.

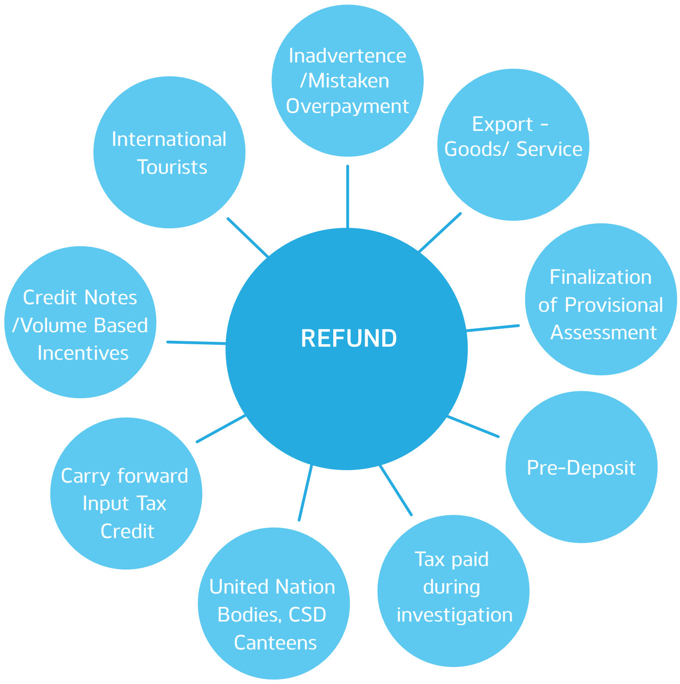
Business Processes for GST: Refund Process

The report of "the Joint Committee on Business Processes for GST" on Refund Process (hereinafter **'the report'**) was put up in the public domain for comments from stakeholders.

The report gives a bird's eye view of the circumstances and the procedural mechanism for granting of refunds under the Goods and Services Tax ('GST') regime. Various situations warranting refund have been addressed individually. The current Tax Track tries to analyze the different refund situations and subsequently, areas which lack clarity.

Business situations addressed by the report

The report covers most of the situations which call for a refund of the taxes/ amount paid. Nine refund situations have been discussed in depth and the tentative mechanism of handling the refund claims have been brought out. The cumbersome manual refund granting process is proposed to be done away with placing heavy reliance on the IT infrastructure to cross verify refund eligibility. Reduced manual intervention is expected to bring down procedural delays in granting refunds. The Taxpayer friendly approach is in line with the Government's promise of improving the ease of doing business. The taxpayer would be required to file separate refund applications to the CG for refund of Integrated GST ('IGST') and Central GST ('CGST') and to the appropriate SG for refund of State GST ('SGST').



The Devil lies in the Detail

The report broadly outlines the mechanism and trigger points for claiming refunds under different situations. The line of thought and purpose which comes out very clearly is the endeavour to make the refund process simple by relying more on technology than manual labour. However refunds being benevolent in nature; policy and fine print have more than once contradicted each other. Various up front exemption schemes in vogue today which are Form based, like CT-3, are proposed to be replaced by the refund mechanism. The eligible purchasers can pay tax up front and then claim refund later based on electronic matching of sales and purchase data. The time limit for filing a refund application from the relevant date is ONE year. A different relevant date for each transactional scenario covered in the report has been proposed. The different refund processes covered in the report are discussed below.

1. Excess payment of tax due to mistake or inadvertence

Three situations of mistaken or inadvertent payment have been addressed:

a. Wrong mention of nature of tax i.e. CGST/ IGST/ SGST

b. Wrong mention of GSTIN, or

c. Wrong mention of tax amount.

The report proposes that refund can be obtained in the first two scenarios by filing a refund application to both centre and/ or state. For the third scenario, an option would be given to the taxpayer to claim refund or suo-moto adjustment of the excess payment against future tax liability. The report provides for treating return itself as refund application. However, such excess payment should not be on account interpretation of notifications, exemptions or any point of law.

2. Export of goods or services

In GST regime, Export of goods and services will be zero rated. Zero rating is enabled by 2 routes, either refund of GST suffered in inputs (no IGST on output) or rebate of the IGST paid on export of goods and services (ITC of GST on inputs/ input services/ capital goods available and can be utilized for payment of output IGST)

Some common compliance requirements and verification procedure:

- The shipping bill and Let Export Order ('LEO') shall be verified online by creating a link between ICEGATE and GSTN.
- Invoice details to be cross verified between monthly sales data uploaded at GSTN and export data with ICEGATE
- Scanned Mate's Receipt and Bill of Lading to be uploaded along with refund application.
- Post facto verification Bank Realization Certificate ('BRC') to ensure foreign exchange inflow. BRC is not mandatory at the time of filing of refund.
- GSTN to be integrated with e-BRC module.
- Proportionate ITC refund (in case refund route is opted) based on Export turnover divided by Total Turnover
- The GST paid character of inputs to be established from IT records of purchases and sales. No physical invoice submission required. Uploading of the invoices in the GSTN along with the returns may be provided in the law. Hence, eligibility of ITC may still be based on review of invoices, though in an electronic form.
- A declaration to be filed by the taxpayer regarding utilization of inputs and input services in the exported goods
- For service exports, as there is no physical export, BRC shall be the evidence of export

EXPERT SPEAK

Constitutional Power

The report provides for payment of IGST on export and claiming rebate of tax paid. However, the CAB does not provide for levying of IGST on exports deeming the transaction as inter state. Levying of IGST on import is specifically provided under Article 269A of the CAB deeming the supply to be inter-state. The deeming provision for export is absent. However, the power of the State to tax the export is curtailed under amended Article 286. The Parliament can legislate under Entry 97 of the Union List to levy IGST on exports.

Prior to the negative list regime, the rebate route was open for Service Tax also. During the present Negative List regime, the option of paying service tax on exported services and claiming rebate of output tax is not allowed. Service Tax is not leviable at all on services performed outside India. Going forward, it would be interesting to see how IGST is proposed to be levied on export of services.

Manual Intervention – Back to old ways?

The idea of integrating GSTN with ICEGATE and e-BRC module is very promising and would lead vast time saving in refund processing. However, no solution for the automated checking of qualitative aspects of credit eligibility has been proposed. Leaving such key aspects to manual scrutiny and satisfaction of officers may undo the benefits of IT infrastructure.

Refund Vs. Rebate

Refund mechanism would entail liaison with the Centre as well as respective State administration, whereas, rebate would only arise in case of IGST payment (only CG liaison). However in the case of accumulated ITC on inputs the refund application needs to filed with both state and centre authorities.

Software Goods or Services?

The report relies on integration between ICEGATE and GSTN for verifying the export of goods. Presently, software export in electronic form is not routed through ICEGATE. Proposed mechanism would fail in the case of software. The industry may be inclined to call software goods as refund process for goods does not hinge upon the BRC. However, other physical export documents would not be generated.

Primary reliance on BRC for service exports and export documents for export of goods, as in the present regime, shall continue in the GST era as well.

3. Deemed Export of Goods or Services

Deemed exports shall be treated at par with actual export and attract IGST. The procedural aspects of IT based invoice matching shall be same as actual exports. Supplies to the following entities have been mentioned as deemed export:

a. EOU

b. SEZ

c. Projects under ICB

d. Mega Power Plants

e. World Bank funded projects

The report provides two mechanisms for refund on deemed exports:

a. Refund – In hands of supplier

- The supplier would have to file a refund claim.
- The supplier should not recover GST on his invoice; doctrine of unjust enrichment would apply.
- Non-availment of credit by the recipient would be verified.
- Supplier to furnish a Chartered Accountant ('CA') Certificate confirming non-passing of GST burden

b. Refund – In hands of the recipient

- The recipient shall be eligible for refund only if supplier has paid GST on the supplies.
- In case recipient is not registered under GST, invoice copies would have to be filed; otherwise monthly purchase details along with return would suffice.

The two refund mechanisms are mutually exclusive.

EXPERT SPEAK

The clarity on the applicability of doctrine of unjust enrichment in the hands of the recipient is not provided.

The States would lose out on revenue because no such deemed export benefit is available in the current VAT regime.

The first method is cumbersome and shall require dual verification at the supplier as well as the recipient end. A method similar to the special person mechanism (discussed later in the Taxtrack) would be more efficient.

4. Finalization of Provisional Assessment

The report discusses a situation where in the Taxpayer adopts for provisional assessment on account of year end/ volume discounts etc. However, another credit/ debit note based method of equalising the net GST payment has been discussed in sub-para (I) of Para 2 of the Report. In case, the provisional assessment method is adopted, the report proposes it to be on the following lines:

- Return to contain field for indicating whether assessment is final or provisional. Assessing officer to decide whether reason for provisional assessment is acceptable.
- GST law may provide for timelines to finalization of the assessment. 90 days has been suggested in the report.

- The officer shall pass a speaking order while finalizing the assessment.
- Refund shall be subject to the doctrine of unjust enrichment. A CA certificate may be furnished to prove non-passing of GST burden.
- The refund amount to be reflected in the return for the month in which the assessment is finalized.

5. Refund of Pre-deposit for filing appeal and refund arising pursuant to an Appellate Authority's order

The Taxpayer would have to file a refund application along with a CA Certificate confirming non-passing of GST burden. The refund shall not be stopped unless the department has obtained a stay from a higher Appellate Authority against the operation of the Appellate Authority's order in pursuance of which the refund has arisen.

The GST law may provide a mandatory waiting period during which refund may not be granted.

Sufficiently senior level authority may be given the powers to withhold refund in exceptional circumstances.

6. Tax paid during investigation but no/ less liability arises at the time of finalization of investigation/ adjudication

In case where the adjudication order/ order relating to finalization of investigation is in Taxpayer's favour, the Taxpayer shall be entitled to the refund of excess tax paid during the course of investigation/ audit. The tax payment challan is proposed to contain a purpose code which shall distinguish a self assessed tax payment from a tax payment made pursuant to investigation/ audit.

The Taxpayer would have to file a refund application along with a CA Certificate confirming non-passing of GST burden after adjudication is in his favour. Such excess payment can be adjusted against future liabilities also upon the Taxpayer's choice.

The GST law may provide a mandatory waiting period during which refund may not be granted to allow the department time to file an appeal against the adjudication order.

Sufficiently senior level authority may be given the powers to withhold refund in exceptional circumstances.

7. Refund for tax payment by special persons

Presently, entities like United Nation Bodies, CSD Canteens, Para Military Forces etc. ('Special Persons') are entitled to procure goods without payment of duty. Such up front exemption is proposed to be discontinued and be replaced by the following practice:

- Special Persons shall obtain registration under GST
- They would be assigned Unique Identification Numbers ('UID')
- All invoices, returns and other documents shall contain a column for capturing the UID
- Suppliers shall indicate their UID in their invoices and upload such data along with their monthly sales statements
- The Special Persons shall file purchase statements along with their claim for refund. Certain specified goods and services ineligible for credit should be marked in the purchase statement.
- The matching of supplies shown by the suppliers and the purchase statements filed by the Special Persons shall be matched by the IT system and refund shall be granted accordingly. Unmatched supplies shall be matched again in the subsequent process runs.

8. Refund for carry forward ITC

The report proposes that refund of ITC attributable to accumulation of stock or capital goods shall not be allowed and would have to be carried forward to the subsequent accounting period.

ITC refund due to inverted duty structure shall be allowed only after due audit and matching of the sales and purchase details uploaded to the GSTN along with the monthly returns.

Proportionate ITC refund may be provided in case of partial reverse charge mechanism. Due to the partial reverse charge, an inverted duty structure may arise and hence a refund mechanism may be provided for.

EXPERT SPEAK

The periodicity of refund has not been mentioned. In the United Kingdom, refunds are granted in case ITC balance is available at the end of the return period. This practice helps the businesses in managing their cash flows.

9. Refund on account of year end or volume based incentives provider by supplier through credit notes.

As discussed in Para 4 above, a credit/ debit note based method of equalising the net GST payment in the case of year end/ volume based incentives etc., is proposed. The credit/ debit notes issued by the Taxpayer shall be integrated into the GST returns and decrease/ increase in the value of supplies shall be allowed to be adjusted through them. Many States today do not allow such adjustments to the taxable value. However recognizing the trends of trade, this new mechanism is proposed. The doctrine of unjust enrichment will apply and certificate of a CA may be required to prove the same.

EXPERT SPEAK

Credit/ Debit note mechanism: Killed by Unjust Enrichment

The purpose of computerisation pf the scheme would be defeated if it is made subject to unjust enrichment. Presently, facility for suo-moto adjustment of service tax liability is available under Rule 6(3) of the Service Tax Rules, 1994 without applicability of unjust enrichment. Under Excise law, price adjustment by issuance of credit/ debit note was rejected by the CESTAT in the case of S. Kumar's Limited Vs. CCE, Indore [2003 (153) E.L.T. 217] citing unjust enrichment. Even though the assessee had repaid the entire duty collected from the buyer, relief was not given. Hence, the doctrine of unjust enrichment would make this issue litigious

The European Court of Justice ('ECJ') in the case of *Elida Gibbs Ltd. Vs. Comm. of Customs and Excise (Case C-317/94)* **held** *that the amount paid by the manufacturer to honour a discount coupon issued for the purpose of sales promotion, was eligible to be deducted from the taxable value of supplies. Principle laid down: The taxable amount, serving as a basis for the VAT to be collected by the tax authorities, cannot exceed the consideration actually received by the manufacturer, which is the basis for calculating the VAT.*

10. Tax Refund for International Tourists ('TRT')

A new scheme is being proposed to allow refund of goods and service tax paid in the country by a foreign tourist when on visit to India. This scheme is in vogue in nearly 52 countries.

The TRT scheme is proposed to be implemented through particular dealers who would be registered for this scheme. Refund would be available at designated airports/ ports. Handling fee shall be deducted from the refund amount.

EXPERT SPEAK

Tax Refund for International Tourist

The TRT scheme adds to the list of international best practices being adopted under the GST. The intricacies of this scheme would become clear only when the fine print is out. Broadly, countries which have similar schemes allow for refund of GST paid on the goods purchased within the country and which are being carried abroad by the tourist along with him. Safeguards and restrictions in terms of documentary proofs, timing of purchases, declaration norms, re-entry of goods and monetary limits are generally prescribed.

11. Documents and information for refund

The report is unclear on the requirement of documents required for filing refund claims. A mixture of electronic filing and manual filing seems to be proposed. Uploading scanned copies of certain documents like 'Mate's Receipt', 'Bill of Lading' and sales invoices in the case of export of goods shall make the process cumbersome and data heavy.

Integration with ICEGATE, e-BRC module and other platforms would certainly reduce manual labour and work towards the end of ease of doing business.

EXPERT SPEAK

A system of data collection with appropriate data fields, capable of catering to the myriad qualification requirements of ITC, refund, unjust enrichment and export confirmation amongst others, must be envisioned with great attention to detail. Such an exercise is required to create a return/ statement format which captures all the relevant data on the basis of which data fields can be cross linked with other information platforms.

Uploading of scanned invoices would be extremely cumbersome and data heavy. Maintenance of such huge volumes of data is a futile expense which can be avoided by use of light weight invoice schemas. Integrating the invoice generation mechanism with the GSTN through such schemas would answer all data collection problems in one stroke. Steps must be taken towards such degree of integration.

It is crucial that the documentation and other procedural aspects remain similar if not same for refund applications to both the CG and SG

12. Preliminary Scrutiny of documents

It has been proposed that the jurisdictional authority shall vet the documents received for a refund claim within 30 days and deficiency if any should be reported directly to the Taxpayer through the portal from which the refund application was filed.

Piece meal and unnecessary queries must be avoided. Once refund application is found to be complete and in order, the same shall be communicated via SMS and e-mail. This date of communication would be relevant from the perspective of time limit for sanctioning the refund and interest to be paid in case of delay.

EXPERT SPEAK

Discretionary Powers

The date of filing of the refund application will not be considered as relevant date in case of deficiency in the application. This gives a huge discretionary power in the hands of authorities.

13. Show Cause Notice ('SCN') to be issued in case of incorrect refund application.

In case the refund application is found to be legally incorrect, an SCN shall be issued and the refund shall be kept in abeyance till the SCN is adjudicated.

14. Interest on delayed refunds

It is proposed that a system generated acknowledgment signifying that the refund application is complete in all respects shall be generated and sent to the Taxpayer. The time limit for sanctioning/ rejecting the refund claim shall start from intimation to

Taxpayer. In case refund is not sanctioned within the prescribed time limit, the system shall automatically calculate the interest. The rate of interest in such cases has been proposed at 6%. In a case the higher appellate authority decides a Taxpayer's refund claim in his favour by reversing the jurisdictional authority's/ lower appellate authority's order, interest on the refund amount shall be payable from the date when the refund ought to have been sanctioned by the jurisdictional authority.

15. Pre and Post Audits

The report proposes pre refund audit in cases where the refund amount exceeds one crore. Likewise, post refund audits have been proposed where the refund amounts exceed one lac/ two lacs in case of specified Taxpayers.

16. General Points

- The State Tax authorities will deal with refund of SGST whereas Central Tax authorities to deal with refund of CGST and IGST.
- Where the refund is in order but the test of unjust enrichment is not satisfied, the amount would be credited to the Consumer Welfare Fund or the Consolidated Fund of India; to be decided by the GST law drafting Committee.
- A minimum threshold in the range of Rs. 500 – 1000 shall be fixed for claiming refund.
- A minimum threshold for obtaining CA's Certificate to be fixed below which, self certification would suffice.
- Refund would be paid electronically through NEFT/ RTGS/ ECS.
- The ITC in the Taxpayer's ledger shall be blocked as soon as an application for refund of ITC is filed. It shall be debited from the account if refund is paid and unblocked if refund is rejected.
- The amount of refund sanctioned shall be adjusted against other confirmed GST liability of the Taxpayer, provided it is beyond the period of appeal. The refund order shall be a speaking order stating reasons for adjustment.

17. Refund situations not covered in Report

The report has not considered the following situations where refunds arise in the present scenario or could arise in the GST regime:

1% Additional Tax

There is no mention of a refund process for the 1% Additional Tax which would be collected by the Centre and assigned to the States. The report specifically mentions CGST, IGST and SGST but does not refer to the Additional tax. Clarity on this issue is extremely necessary..

Area Based Exemption

There is no mention about the area based exemption currently enjoyed under the Excise Law and the Packaged Scheme of Incentives ('PSI') granted by various SGs. Though the Government does not wish to use tax as business incentivizing measure going forward, the principles of promissory estoppel cannot be ignored. In the GST regime, even if such incentives are to be granted by the concerned Ministries (other than Finance), a mention in the report would have afforded much needed clarity on this subject.

Excise Duty Exemption Certificate Schemes

The present practice of excise duty exemptions based on end use certificates from the respective ministries and notified customers are not discussed. Currently exemptions are provided for Public Funded Research Institution For Research Purposes, Ministry of New & Renewable Energy, water supply projects, Ministry of Defense, relief materials supplied to the State affected by "national calamity" etc. The mechanism provided for United Nation bodies and CSD canteens could have been proposed for all the end use based exemption to avoid the breaking of credit chain.

18. ITC on inputs and input services used for manufacturing/ generation/ production/ creation of tax free supplies or non-GST supplies

Every supply of goods or services would either be taxable, zero rated, exempted, nil rated or outside the scope of GST. Input goods and services used for providing taxable or zero rated supplies shall be eligible for ITC. However, suppliers of exempted, nil rated or non-GST supplies would be ineligible to avail ITC. In case of mixed supplies, proportionate ITC may be allowed.

Details of even those invoices would have to be uploaded along with the return on which no ITC is available in order to facilitate matching of the supply details uploaded by the suppliers.

Apart from the above, an exclusion list of goods and services is proposed to be brought out on which ITC would not be available.

GST being a destination based consumption tax; the tax cost included in the final product must accrue to the state where the goods are finally consumed. Accordingly, the report makes a recommendation that the ineligible ITC should be allocated to the State where the final consumption of supply takes place. Ideally, the IGST credit mechanism would transfer the credit to the ultimate consuming State. However, the breaking of the credit chain, due to exemption/ nil rating/ non-GST supplies etc., does not allow transfer of credit to the consuming state. Hence, such a mechanism is a must to adhere to the principles of GST.

EXPERT SPEAK

Credit chain break - Transfer of tax to consuming State

The ambitious plan of the Government to distribute taxes to the ultimate consuming State is very promising and in line with the GST principles. However, tracking the final consumption of supplies would require tremendous amount of data to be captured from the supplier's invoices. This entails voluminous data uploading responsibility on the suppliers and data retention and processing facility at the GSTN. The industry must take a cue from this proposal and align their ERPs and accounting systems to capture consumption pattern data. The apportionment of revenue in the said situation would be a matter of concern between Centre and States; hence the taxpayer should not be affected by the same.

The ITC proportioning methods would be similar to the present Rule 6 of the CENVAT Credit Rules, 2004. The Joint Committee Report on Registration allows separate registrations for separate business lines of an entity. This facility has the potential to align ITC eligibility with the actual consumption of supplies availed by entities. Reading the two reports harmoniously, it appears that credit eligibility and calculation of reversal would be simplified and brought closer to the economic reality.

19. Relevant date for the purpose of claiming refund

The report has proposed the following events as the trigger points for a refund claim:

Business Situations	**Relevant Date for Refund**
Excess payment of tax due to mistake or inadvertence	Date of payment of GST on account of which refund arises
Export of Goods	Date of 'Let Export Order'
Export of Services	Date of BRC
Deemed Export – In the hands of Supplier	Not Mentioned
Deemed Export – In the hands of Recipient	Date of payment of IGST to supplier
Finalization of Provisional Assessment	Date of Finalization order
Refund of Pre-deposit	Date of communication of Appellate Authority's order
Tax paid during investigation	Date of communication of adjudication order or order relating to completion of investigation.
Refund of tax paid by Special Persons	Date of payment of GST to the supplier
Partial Reverse Charge-Refund for ITC carried forward	Date of provision of service
Inverted Duty Structure-Refund for ITC carried forward	Last day of Financial year

Conclusion

This report provides useful guidance and clarity with respect to refunds under GST. This report also highlights the intention of the Government that refund processes should be smoothened and there should be minimal physical documentation.

Having said so whether the said refund process will turn out to be the Taxpayer friendly or otherwise would be completely dependent on infrastructure created by the Authorities and integration with the existing backend process. On the whole, a shift towards IT based integration can be seen. Effective implementation and trouble-shooting would be the key to successful tax administration and a climate of tax compliance.

The report can be downloaded from:
http://dor.gov.in/scgst.

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