L&S Update

an e-update to clients from
Lakshmikumaran & **Sridharan**

L&S GST Update No. 15
4th April, 2017

Update on Revised Draft Refund Rules

Application for refund of tax, interest, penalty, fee or any other amount:

- Application for claim of refund of tax, interest, penalty, fee or any other amount paid to be made in **Form GST RFD-01**, electronically through the Common Portal wither directly or through facilitation centre.

- Refund of balance in electronic cash ledger may also be made through the return furnished for the relevant tax period in **Form GSTR-3/4/7**, as the case may be..

- Refund application in case of export of goods to be filed only after the export manifest or an export report is delivered under Section 41 of Customs Act, 1962

- Refund application in case of supplies to SEZ Unit/ Developer shall be filed by the supplier after the goods have been admitted in full in the SEZ for authorized operations, as endorsed by the specified officer of the SEZ. Further, application to be accompanied with such evidence regarding receipt of services for authorized operations as endorsed by the specified officer of the SEZ

- Application of refund in case of Deemed Exports shall be filed by the recipient of deemed export supplies;

- In case of Casual taxable person/ Non-resident taxable person, refund of advance tax deposited after adjustment of tax payable shall be claimed either in the last return to be furnished by such person or only after furnishing of the said last return.

- List of documentary evidences have been provided to establish claim of refund. Apart from the specific documentation (**Annexure 1**), the following have to be furnished:
  - Where amount claimed does not exceed INR 2 lacs, a declaration* that the incidence of tax, interest or any other amount claimed as refund has not been passed to any other person.
  - Where amount claimed exceeds INR 2 lacs, a certificate* in **Annex 2 of Form GST RFD-01** issued by a Chartered Accountant/Cost Accountant.
  - Where amount recovered from recipient, it shall be deemed that incidence has been passed on to the ultimate consumer.

No declaration is required in certain cases (Please refer* ***Annexure 2**)*

- In case of refund of input tax credit, Electronic Credit Ledger to be debited by an amount equal to the refund claimed

- Refund in case of zero-rated supply of goods or services or both without payment of tax under bond or letter on undertaking shall be as per the formula (**Annexure 3**)

Acknowledgement:

- Acknowledgment in **Form GST RFD-02** shall be made available to the applicant through the common portal with 15 days of filing of the claim. Any deficiency noticed by the proper officer shall be communicated to the applicant in **Form GST RFD-03** for the purpose of rectification.

Grant of Provisional Refund:

- Provisional refund shall be granted subject to following conditions:
  - Person claiming refund, during any period of 5 years immediately preceding the period for which refund is claimed, has not been prosecuted for any offence under the Act or under any existing law where the amount of tax evaded exceeds INR 250 lakh
  - GST compliance rating of applicant is not less than 5 on 10

- No proceeding of any appeal, review or revision is pending on any of the issues which form the basis of refund and if pending, have not been stayed by appropriate authority or Court.

- Order for refund to be made by the proper officer in **Form GST RFD-04**, after scrutiny of the claim & evidence submitted and on being prima facie satisfied, within a period not exceeding 7 days from the date of acknowledgement.

- Payment advice to be issued by the proper office in **Form GST-RFD-05** and the refund amount shall be electronically credited to the bank account of the applicant mentioned in the registration particulars and in the application for refund.

Order Sanctioning Refund:

- Final order of sanction of refund to be issued in **Form GST RFD-06**. Where the entire refund amount is adjusted against any outstanding demand, order giving details of such adjustment may be issued in **Form GST RFD-07**.

- Where the proper officer is satisfied that whole or part of the refund amount claimed is not admissible or not payable to the applicant, he shall issue a notice is **Form GST RFD-08** requiring him to furnish a reply in **Form GST RFD-09** within 15 days of receipt. After considering applicant's reply, proper officer to make order in **Form GST RFD-06**, sanctioning the amount in whole or part or rejecting the refund claim. Opportunity of being heard shall be given in case of rejection of refund claim.

- Where the proper officer is satisfied that refund is payable to applicant, he shall make an order in **Form GST RFD-06** and issue a payment advice in **GST RFD-05**. Where the refundable amount is held to be not payable to the applicant, proper officer shall make an order and issue an advice as above, for the amount of refund to be credited in the Consumer Welfare Fund.

Credit of amount rejected in refund claim:

- Upon deficiencies in the application of refund being communicated to the applicant, the amount debited to the electronic credit ledger shall be re-credited.
- Where amount claimed as refund is partially or wholly rejected, such partial or whole amount shall be re-credited to the electronic credit ledger by an order made under **Form GST PMT-03** .

Order sanctioning interest of delayed refunds:

- Where interest in due and payable to the applicant, the proper officer shall make an order along with payment advise in **Form GST RFD-05** specifying amount of delayed refund, period of delay for which interest is payable and the amount of interest payable which is to be credited to the applicant's bank account mentioned in the registration or refund application.

Refund of tax to certain persons:

- Application for refund of tax paid on inward supplies to be filed by **specified persons*** in **Form GST RFD-10** once in every quarter, electronically on the common portal, either directly or through a Facilitation Centre along with a statement of inward supplies of goods or services or both in **Form GSTR-11** prepared on the basis of statement of outward supplies furnished by the supplier in **Form GSTR-1.**

- Acknowledgement for receipt of application to be issued in **Form GST RFD-02**

**specified persons* *means any specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other person or class of persons as may be specified.*

- Refund of tax paid shall be available if:
  - Inward supplies were received from a registered person against a tax invoice and price of supply covered under a single tax invoice exceeds INR 5,000, excluding tax paid
  - Name and GSTIN or UIN of the applicant is mentioned on the tax invoice
  - Such other notified restrictions or conditions are complied with.

- In case of inconsistency between the Refund Rules and an express provision in a treaty or other international agreement to which the President or the Government of India is a party, the provisions of the treaty or international agreement shall prevail.

Consumer Welfare Fund:

- Any amount credited to the Consumer Welfare Fund if is found payable to any claimant by the orders of the proper officer, appellate authority or Appellate Tribunal or Court shall be paid from such fund.
- Appointment of a Standing Committee and other procedures for proper utilization of the money credited to the Consumer Welfare Fund have also been specified in the Refund Rules.

Annexure 1

List of documentary evidences to establish refund due to the applicant

Situation in which refund filed	Documentary evidence
On export of goods	Statement containing: ✓ Number and date of shipping bill or bill of export; and ✓ Number and date of relevant export invoices.
On export of services	Statement containing: ✓ Number and date of invoices; and ✓ Bank Realization Certificates or Foreign Inward Remittance Certificates
Supply of goods made to a SEZ Unit/ Developer	✓ Statement containing number and date of invoices; ✓ Evidence regarding endorsement by Specified Officer
Supply of service made to a SEZ Unit/ Developer	✓ Statement containing number and date of invoices; ✓ Evidence regarding endorsement by Specified Officer; ✓ Details of payment along with proof thereof, made by the recipient to the supplier for authorized operations as per SEZ Act, 2005

Situation in which refund filed	Documentary evidence
On Deemed Export	Statement containing: ✓ Number and date of invoice; and ✓ Such other evidence as may be notified.
Refund of unutilized input tax credit under Section 54(3) where accumulation on account of inverted duty structure, other than nil rated or fully exempt supplies	Statement in Annex 1 of **Form GST RFD-01** containing number and Invoice received and issued
Refund on account of finalization of provisional assessment	✓ Reference No. of the final assessment order; and ✓ Copy of final assessment order
Refund on account of order passed by Appellate Authority or Appellate Tribunal or Court	✓ Reference No. of the order; and ✓ Copy of order passed by the proper officer or an Appellate Authority or Appellate Tribunal or court

Annexure 2

Cases where no declaration/ certificate is required to be furnished

- 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

- Refund of unutilized input tax credit

- 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

- Refund of tax pursuant to Section 77 i.e. where tax is paid considering the supply to be intra state and which is found to be inter state and vice versa.

Annexure 3

Formula for refund in case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking

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

Phrase	Meaning
Refund Amount	Maximum refund that is admissible
Net ITC	Input Tax Credit availed on inputs and input services during the relevant period
Turnover of zero-rated supply of goods	Value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking

Phrase	Meaning
Turnover of zero-rated supply of services	Value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated as follows: Aggregate of payments received during the relevant period + supplies completed during the relevant period for which advance already received (-) advance received for supplies not completed.
Adjusted Total Turnover	Turnover in a State/ Union territory excluding value of exempt supplies other than zero-rated supplies.
Relevant Period	Period for which refund had been claimed

NEW DELHI
5 Link Road, Jangpura Extension,
Opp. Jangpura Metro Station,
New Delhi 110014
Phone : +91-11-4129 9800

B-6/10, Safdarjung Enclave
New Delhi - 110 029
Phone : +91-11-4129 9900
E-mail : lsdel@lakshmisri.com

MUMBAI
2nd floor, B&C Wing,
Cnergy IT Park,
Appa Saheb Marathe Marg, (Near Century Bazar)
Prabhadevi, Mumbai - 400025.
Phone : +91-22-2439 2500
E-mail : lsbom@lakshmisri.com

CHENNAI
2, Wallace Garden, 2nd Street
Chennai - 600 006
Phone : +91-44-2833 4700
E-mail : lsmds@lakshmisri.com

BENGALURU
4th floor, World Trade Center
Brigade Gateway Campus
26/1, Dr. Rajkumar Road,
Malleswaram West,
Bangalore-560 055.
Ph: +91-80-4933 1800
E-mail : lsblr@lakshmisri.com

HYDERABAD
'Hastigiri', 5-9-163, Chapel Road
Opp. Methodist Church, Nampally
Hyderabad - 500 001
Phone : +91-40-2323 4924
E-mail : lshyd@lakshmisri.com

AHMEDABAD
B-334, SAKAR-VII,
Nehru Bridge Corner,
Ashram Road,
Ahmedabad - 380 009
Phone : +91-79-4001 4500
E-mail : lsahd@lakshmisri.com

PUNE
607-609, Nucleus, 1 Church Road,
Camp, Pune – 411 001
Phone : +91-20-6680 1900
E-mail : lspune@lakshmisri.com

KOLKATA
2ND Floor, Kanak Building
41, Chowringhee Road,
Kolkatta-700071
Phone : +91-33-4005 5570
E-mail : lskolkata@lakshmisri.com

CHANDIGARH
1st Floor, SCO No. 59,
Sector 26,
Chandigarh - 160026
Phone : +91-172-492 1700
E-mail : lschd@lakshmisri.com

GURGAON
OS2 & OS3, 5th Floor, Corporate Office Tower, AMBIENCE Island, Sector 25-A,
Gurgaon - 122001
Phone : +91-124-477 1300
E-mail :lsgurgaon@lakshmisri.com

ALLAHABAD
3/1A/3, (opposite Auto Sales), Colvin Road, (Lohia Marg),
Allahabad -211001 (U.P.)
Phone no. : (0532) – 2421037, 2420359
Email: lsallahabad@lakshmisri.com

www.lakshmisri.com
www.lakshmisri.cn
www.gst.lakshmisri.com
www.addb.lakshmisri.com