

**DRAFT**

**GOODS AND SERVICES TAX -**

**REFUND RULES, 20--**

**Note: Corresponding changes in the Model GST Law are being carried out separately. Comments , if any may kindly be given by 28<sup>th</sup> September, 2016.**

## **Chapter-\_\_: REFUND**

### **1. Refund of tax, interest, penalty, fees or any other amount**

(1) Any registered taxable person, except the persons covered by notification issued under clause (d) of sub-section (6) of section 38, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, may file an application in **FORM GST RFD-1** electronically through the Common Portal either directly or from a Facilitation Centre, notified by the Board or Commissioner:

Provided that any claim for refund relating to balance in the electronic cash ledger in terms of sub-section (6) of section 35 may be made through the return for the relevant tax period in **FORM GSTR-3**, **FORM GSTR-4** or **FORM GSTR-7**:

Provided further that in case of export of goods, application for refund shall be filed only after the export manifest or an export report, as the case may be, in respect of such goods is delivered under section 41 of the Customs Act 1962:

Provided also that in respect of supplies made to an SEZ unit or a developer, or supplies regarded as deemed exports, the application shall be filed by the said unit or the developer or the recipient of deemed export supplies.

(2) The application under sub-rule (1) shall be accompanied by any of the following documentary evidences, as applicable, to establish that a refund is due to the applicant:

(a) the reference number of the order and a copy of the order passed by the proper officer or an appellate authority or any competent court resulting in such refund including refund of pre-deposit under chapter XVIII along with the reference number of the payment of the amount claimed as refund;

(b) a statement containing the number and date of shipping bills or bills of export and the number and date of relevant export invoices, in a case where the refund is on account of export of goods;

(c) a statement containing the number and date of invoices as prescribed in rule **Invoice.\_** in case of supply of goods made to an SEZ unit or a developer;

(d) a statement containing the number and date of invoices, in a case where the refund is on account of deemed exports;

(e) a statement containing the number and date of invoices and the relevant Bank Realization Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of export of services;

(f) a statement containing the number and date of invoices and the details of payment, along with proof thereof, made by the claimant to the supplier for authorized operations as defined under the SEZ Act, 2005, in a case where the refund is on account of supply of services made to an SEZ unit or a developer;

(g) a statement in **Annex 1** of **FORM GST RFD-1** containing the number and date of invoices received and issued during a tax period in a case where the claim

pertains to refund of any unutilized input tax credit under sub-section (2) of section 38 where the credit has accumulated on account of rate of input tax being higher than the rate of output tax;

(h) the reference number of the final assessment order and a copy of the said order in a case where the refund arises on account of finalisation of provisional assessment;

(i) a declaration to the effect that the incidence of tax and interest claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed is less than five lakh rupees:

Provided that a declaration is not required to be furnished in respect of cases covered under clause (a), (b) or (d) of sub-section (6) of section 38;

(j) a Certificate in **Annex 2** of **FORM GST RFD-1** issued by a Chartered Accountant or a Cost Accountant to the effect that the incidence of tax and interest claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed is five lakh rupees or more:

Provided that a certificate is not required to be furnished in respect of cases covered under clause (a), (b) or (d) of sub-section (6) of section 38;

Explanation 1.- For the purpose of this rule, "invoice" means invoice conforming to the provisions contained in section 23A in case of refunds referred to in clause (c) of sub-section (6) of section 38.

Explanation 2.- 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.

(3) Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant in an amount equal to the refund so claimed.

(4) Where any taxable goods or services are exported without payment of tax, under bond or letter of undertaking under **section** \_\_\_ of the IGST Act, 201\_, refund of input tax credit shall be granted as per the following formula:

$$\text{Refund Amount} = \frac{(\text{Export turnover of goods} + \text{Export turnover of services}) \times \text{Net ITC}}{\text{Adjusted Total Turnover}}$$

Where,-

(A) "Refund amount" means the maximum refund that is admissible;

(B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period;

(C) "Export turnover of goods" means the value of goods exported during the relevant period without payment of tax under bond or letter of undertaking;

(D) "Export turnover of services" means the value of services exported without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Export turnover of services = payments received during the relevant period for export services + export services whose supply has been completed for which payment had been received in advance in any period prior to the relevant period - advances received for export services for which the supply of service has not been completed during the relevant period;

(E) "Adjusted Total turnover" means the value of turnover in a State, as defined under sub-section (104) of section 2, excluding the value of exempt supplies, during the relevant period;

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

Provided that no refund of input tax credit shall be allowed if the supplier of goods and / or services avails of drawback allowed under the applicable Drawback Rules or claims rebate of tax paid under the Act or the IGST Act, 201\_ in respect of such tax.

(5) The application for refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 19A at the time of registration, shall be claimed either in the last return required to be filed by him or only after filing of the said last return.

(6) Where the application relates to a claim for refund from the electronic cash ledger, an acknowledgement in **FORM GST RFD-2** shall be made available to the applicant through the Common Portal electronically, clearly indicating the date of filing of the claim for refund.

(7) The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer who shall, within fifteen days of filing of the said application, scrutinize the application for its completeness and where the application is found to be complete in terms of sub-rule (2), (3) and (4), an acknowledgement in **FORM GST RFD-2** shall be made available to the applicant through the Common Portal electronically, clearly indicating the date of filing of the claim for refund.

(8) Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in **FORM GST RFD-3** through the Common Portal electronically, requiring him to file a refund application after rectification of such deficiencies.

(9) Where deficiencies have been communicated in **FORM GST RFD-3** under the GST Rules of the State, the same shall also deemed to have been communicated under this Rule along with deficiencies communicated under sub-rule (8).

#### **[CGST Rules]**

(9) Where deficiencies have been communicated in **FORM GST RFD-3** under the CGST Rules, the same shall also deemed to have been communicated under this Rule along with deficiencies communicated under sub-rule (8).

#### **[SGST Rules]**

## **2. Grant of provisional refund**

(1) The provisional refund under sub-section (4A) of section 38 shall be granted subject to the following conditions -

- (a) the person claiming refund has, during any period of five 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 earlier law where the amount of tax evaded exceeds two hundred and fifty lakh rupees;
  - (b) the GST compliance rating of the applicant is not less than five on a scale of ten;
  - (c) no proceeding of any appeal, review or revision is pending on any of the issues which form the basis of the refund and if pending, the same has not been stayed by the appropriate authority or court.
- (2) 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 under sub-rule (1) is due to the applicant in accordance with the provisions of sub-section (4A) of section 38, shall make an order in **FORM GST RFD-4**, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding seven days from the date of acknowledgement under sub-rule (7) of rule 1.
- (3) The proper officer shall issue a payment advice in **FORM GST RFD-8**, for the amount sanctioned under sub-rule (2) to 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.

### **3. Order sanctioning refund**

- (1) Where, upon examination of the application, the proper officer is satisfied that a refund under sub-section (4) of section 38 is due and payable to the applicant, he shall make an order in **FORM GST RFD-5**, sanctioning the amount of refund to which the applicant is entitled, mentioning therein, the amount, if any, refunded to him on a provisional basis under sub-section (4A) of section 38, amount adjusted against any outstanding demand under the Act or under any earlier law and the balance amount refundable:

Provided that in cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any earlier law, an order giving details of the adjustment may be issued in **FORM GST RFD-6**.

- (2) 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 in **FORM GST RFD-7** to the applicant, requiring him to furnish a reply within fifteen days of the receipt of such notice and after considering the reply, make an order in **FORM GST RFD-5**, sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provision of sub-rule (1) shall apply *mutatis mutandis* to the extent refund is allowed:

Provided that no application for refund shall be rejected without giving the applicant a reasonable opportunity of being heard.

(3) Where the proper officer is satisfied that the amount refundable under sub-rule (1) or (2) is payable to the applicant under sub-section (6) of section 38, he shall make an order in **FORM GST RFD-5** and issue a payment advice in **FORM GST RFD-8**, for the amount of refund to 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.

(4) Where the proper officer is satisfied that the amount refundable under sub-rule (1) or (2) is not payable to the applicant under sub-section (6) of section 38, he shall make an order in **FORM GST RFD-5** and issue an advice in **FORM GST RFD-8**, for the amount of refund to be credited to the Consumer Welfare Fund.

#### **4. Credit of the amount of rejected refund claim**

(1) Where any deficiencies have been communicated under sub-rule (8) of rule 1, the amount debited under sub-rule (3) of rule 1 shall be re-credited to the electronic credit ledger.

(2) Where any amount claimed as refund is rejected under rule 3, 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 **FORM GST PMT-2A**.

*Explanation.*– For the purpose 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.

#### **5. Order sanctioning interest on delayed refunds**

Where any interest is due and payable to the applicant under section 39, the proper officer shall make an order and a payment advice in **FORM GST RFD-9**, specifying therein the amount of refund which is delayed, the period of delay for which interest is payable and the amount of interest payable, and such amount of 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. Refund of tax to certain persons**

(1) Any person eligible to claim refund of tax paid by him on his inward supplies as per a notification issued under clause (d) of sub-section (6) of section 38 shall apply for refund in **FORM GST RFD-10** once in every quarter, electronically on the Common Portal either directly or from a Facilitation Centre, notified by the Board or Commissioner along with a statement of inward supplies of goods and/or services in **FORM GSTR-11**, prepared on the basis of statement of outward supplies furnished by corresponding suppliers in **Form GSTR-1**.

(2) An acknowledgement for receipt of the application for claiming refund shall be issued in **FORM GST RFD-2**.

(3) Refund of tax paid by the applicant shall be available if-

- (a) the inward supplies of goods and/or services were received from a registered taxable person against a tax invoice and the price of the supply covered under a single tax invoice exceeds five thousand rupees, excluding tax paid, if any;
  - (b) name and GSTIN/UIN, if available, of the applicant is mentioned in the tax invoice; and
  - (c) such other restrictions or conditions as may be specified in the notification are satisfied.
- (4) The provisions of rule 3 shall apply *mutatis mutandis* for the sanction and payment of refund under this rule.
- (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.

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