

Some recent Circulars – Help at hand for Exporters

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The position of exporters in the GST regime has been unenviable and much of that should be attributed to the rather slow process of refunds. While those who opted for the rebate route continue faced challenges arising from mismatches of parameters such as invoice numbers, shipping bills, values and tax between the Returns and the Customs Portal, the second category of exporters who opted for refund of GST input credit were facing challenges in various forms – such as proof of exports, proof of ITC earned, exports beyond 3 months of invoicing, proof of payment to suppliers, need for Bank Realization Certificates, ill-devised refund forms etc. Relatively speaking, the second category of exporters were worse off than the first category. Besides the procedural, differences in interpretation also added to their woes.

Welcome Circular 37/2018-CGST:

The Board has recently issued a circular aimed at easing the process of refund of GST credit to exporters and merits attention. Let us look at how the Circular eases some of the difficulties faced by Exporters:

1. Discrepancy between value as per Invoice and value in Shipping Bill – A solution for refund

This can happen for a number of reasons including the difference in terms of Trade (FOB / CIF), exchange rate and data entry mistakes. Such differences identified in manual processing affected the release of refunds.

Thanks to this Circular, there is help at hand. The authorities have now been instructed that during the processing of the refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill / bill of export should be examined and the lower of the two values should be reckoned for refund. Thus, refunds can no longer be withheld for reasons of mismatch of values.

2. Refunds for a tax period in which only Exports happen or only ITC is earned – When to claim refunds?

The online Form RFD 01A for claim of refund was devised in such a way that an exporter would be eligible to claim refund only if *both* the ITC as well as the Exports occurred in the same month. This was rarely the case as exports may happen a month or so after production. While ITC would be earned in a certain month, exports would happen in another. The Form RFD 01A was devised as a monthly return and this meant that refunds could be applied only if exports and ITC happened in the same month. This encouraged many exporters to prefer the IGST paid route. But there were many who could not opt for this route, such as exporters of finished leather operating under Inverted Pyramid Structure. With rapid accumulation of ITC and a mismatch between monthly exports and monthly ITC, these exporters were in a bind.

The Circular has come as a major relief for exporters of finished leather as well as for others who opted for refund of ITC. The Circular has clarified that refund application can be made for one month or quarter or by clubbing successive months/quarters even when there is no ITC earned in a particular month/quarter. It is expected that the form will also be redesigned to give effect to the Circular. In other words, where a finished leather exporter has accumulated large ITCs over say a 4-month period and he exports in the 5th month, he can now file RFD 01A for all 5 months together, to get refund of ITCs earned in respect of such exports.

3. Refund does not require proof of realisation:

It is not uncommon to find lower level authorities making their own laws on various matters. Refund on exports is no exception. Although the Act or the Rules do not require realisation of proceeds of export of goods as a precondition for refunds, many lower authorities insisted for proof of realisation for processing refunds.

This has also been addressed by instructing field formulations not to insist on proof of realisation for export of goods while reiterating that such realisation is a precondition for refunds only for Service exports.

4. Merchant Exports and Suppliers to Merchant Exporters are eligible for refund:

Although the law was quite clear that the Merchant Exporter availing 0.1% GST on inputs was entitled to refund of the said 0.1%, there has been some confusion as to the entitlement. Similarly refund for Supplier to Merchant Exporter under Inverted Tax Structure (their input rate being higher than 0.1% output rate) was also subject to some misunderstanding. It has now been clarified in the Circular that both can apply for refund of the respective input taxes with an additional clarification that the Merchant exporter claiming refund of 0.1% input tax shall only go through the refund route and not the Rebate route – a matter that is already provided in Rule 96(10).

5. Five documents to be submitted for processing refund claim through RFD 01A

Putting an end to arbitrariness, the Circular now provides that only the following 5 documents need be submitted for claim of refund of ITC on export of goods:

- a. Copy of Online RFD 01A
- b. Statement 3A of Form RFD 01A filed electronically
- c. Statement 3 of Form RFD 01A filed manually
- d. Invoices for inputs and input services
- e. Undertaking/Declaration in Form RFD 01A

It may be noted that Export Invoices, proof of realization is not required to be submitted. But the need for invoices for inputs and input services has been explained as due to delay in putting in place certain software modules. It is however not clear as to how the department has not found it necessary to verify ITC under the IGST paid route which is only an indirect method of obtaining refund. In any case, one shudders to think of hundreds of invoices being carried to the department for verification by exporters and wonders if the department has adequate manpower to handle this volume of invoice verification. It would be in the fitness of things that both methods should be treated on par when it comes to verification and verification if at all should be restricted to test check with severe penalties for exaggerated claims.

6. Exports beyond 3 months of invoicing / Exports prior to LUT – Refund cannot be denied

In cases where export invoice is raised under LUT but exports do not take place within the mandatory 3 months of invoicing or where LUT was obtained subsequent to exports, the authorities rejected the LUT route and demanded payment of IGST. This Circular serve to assist such of those exporters who may have delayed exports, but have nonetheless exported subsequently, by instructing the Commissioners to extend the 3-month period suitably. The Circular also helps those who exported without the actual LUT on hand. The philosophy in both circumstances appears to not deny substantive benefits of zero rating where exports have indeed been made considering the facts and circumstances of the case.

7. Repetitive filing of RFD 01A owing to discrepancies:

The Circular clarifies that subsequent filings of RFD 01A owing to discrepancies in the original filing shall be considered as new filing and the application has to be made afresh with the original ARN, debit entry generated earlier and the hard copy of refund application made filed online earlier.

8. GST refund and Duty Drawback - Clarification

The law is quite clear that where duty drawback has been availed at full rate in respect of exports, the exporter shall not be entitled to refund of Central Taxes, i.e., CGST and IGST. The term SGST is conspicuously absent as DBK only relieves central levies leaving the exporter free to claim refund of SGST.

This has not been appreciated by certain officials resulting in denial of refund of SGST. The Circular seeks to put the issue in perspective by reiterating the entitlement to refund of SGST in such cases.

Another misinterpretation that GST refund shall not be allowed where even DBK at lower rates have been availed is also corrected by reiterating the position that GST refund is permitted in such cases.

9. GST Refunds - Corrections made in Table 9 of GSTR 9 to be taken into account

In cases where there are errors in entering invoices/shipping bills of a month, an Exporter was allowed to make the necessary amendments in Table 9 of GSTR 1 of any subsequent period. Unfortunately, the corrections were not acted upon. In other words, where for instance an error has taken place in a particular invoice which was subsequently amended through table 9 in a subsequent period, refund in respect of that invoice was still not processed. The very purpose of Table 9 stood defeated.

It has now been advised that while processing refunds, amendments in Table 9 of the subsequent period shall also be reckoned. This means that in case of GST refunds, the cumulative invoice value in GSTR 1 up to a tax period shall be matched with the cumulative invoice value as per GSTR 3B upto the same tax period, and refunds will be issued if both agree.

Circular sends an important message to Field Formulations:

The Circular is a welcome initiative and exporters should make the best use of this circular to pursue refunds. Among other things, the facility in RFD 01A to accept refund applications even in a tax period with no input tax credit comes handy, particularly for exporters of goods subject to inverted pyramid structure.

The Circular sends an important message to field formulations of the GST department that refunds should not be withheld due to minor procedural lapses or non-substantive errors or omission. Circulars are binding on the department and its officials. It is expected that the department will follow the Circular in letter and spirit.

Simplifying LUT - Circular 40/2018

In a further move to liberalise, Circular 40 of 2018 dated 6 April 2018 simplifies the process of obtaining LUT for the current financial year, clarifying that no physical documents need be submitted. Further, once acknowledgment for filing RFD 011 bearing Application Reference Number (ARN) is generated, the LUT is deemed to have been granted.

The grievance portal of GST too has been highly effective in resolving grievances on an expeditious basis. Exporters may avail of this facility to resolve any difficulties including refund related issues.
