

Refund of Tax paid under wrong head – Controversy prevails

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By:

CA. Chitresh Gupta

FCA, LL.B, B. Com(H), IFRS (Cert.), IDT (Cert.)

Co-Author of book “GST –Law, Analysis & Procedures”

Faculty on Goods & Services Tax by ICAI

In the abundance of decisions taken in the recently held 45th GST Council Meeting, one of the important proposal put forward was to remove the ambiguity regarding procedure and time limit for filing refund application in case a taxpayer pays the tax under wrong head e.g. a registered person pays CGST and SGST on a transaction considered by him to be in intra state supply and which is subsequently held to be inter-state supply and vice versa.

Taking care of the proposal put forth by the 45th GST Council meeting, CBIC has added Sub rule (1A) to Rule 89 of the CGST Rules, 2017 through Notification No. 35/2021-Central tax dated 14th September 2021 which is detailed below:

Rule 89 (1A): *Any person, claiming refund under section 77 of the Act of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in **FORM GST RFD-01** through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:*

Provided that the said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force.

Apart from the above insertion of Rule 89(1A) to CGST Rules, 2017, CBIC has also come with the Circular No. 162/18/2021-GST dated 25th September 2021 regarding the clarification in respect of refund of tax specified in Section 77(1) of CGST Act, 2017 and section 19(1) of the IGST Act, 2017.

Although, the insertion of Rule 89(1A) of CGST Rules, 2017 and above mentioned CBIC Circular provides clarity on claiming of refund under the provisions of Section 77 of CGST Act, 2017 and Section 19 of IGST Act, 2017, but the said provisions lacks clarity on the following issues:

1. Refund of tax after the Adjudication or Appellate proceedings

Section 73(10) of CGST Act, provides a time limit three years from the due date for furnishing of annual return for the financial year for issue of order in case of determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful-misstatement or suppression of facts.

Further, Subsection 3 of Section 73 provides that the proper officer shall issue the notice at least three months prior to the time limit specified for issuance of order.

Therefore, Section 73 of CGST Act, 2017 provides a time of 2 years and 9 months after the due date for furnishing of annual return for the financial year to the Proper Officer for issuance of notice.

However, Proviso to Rule 89(1A) of CGST Rules, provides a lime limit to claim the refund of 2 years from the date of this Rule come into force i.e. the time limit shall be counted from 24th September 2021 in cases where the tax in the correct head has been paid by the taxpayer before coming of this Rule.

Thus, for any payment of tax under the correct head before 24th September 2021 which had been incorrectly paid under wrong head, the time limit to claim refund on such tax shall be two years from 24th September 2021 i.e. 23th September 2023.

Consequently, if the Proper Officer under Section 73 of CGST Act, 2017 determines a tax paid under wrong head

2. GST Compliance Requirements for Input Tax Credit

- **Time limit to avail ITC:** ITC for the FY 2020-21 can be taken upto the return for the month of September 2021. As a precautionary measure, creditors outstanding on March 2021 may be evaluated to ensure ITC on such invoices is taken.
- **ITC Reversal:** Reverse ITC on instances where the Company has not paid the consideration to the Supplier within 180 days from the date of supplier's invoice. Keep the Creditors reconciliation ready for the invoices above 180 days and take appropriate actions.

- **Reconciliation of ITC:** Keep monthly reconciliation between Purchase ledger Vs GSTR-2A and GSTR-2B ready to avoid payment of interest.
- **Ineligible ITC:** It is to be ensured that ineligible ITC on supplies received during FY are reported in GSTR-3B of each month. In case the same is not reported during the FY then it can be reported in the return for the month of March 2021.

3. GST Compliance Requirements for Reconciliations

- **Reconciliation of GSTR-1 and GSTR-3B:** Reconciliation of outward supplies in GSTR-1 and GSTR-3B need to be done and if there is any excess outward supply is shown in GSTR-1, then identify it and pay tax with interest @18% as soon as possible.
- **Reconciliation of E-way Bill generated with GSTR-1:** It is important to have a reconciliation between the amounts of E-way generated during the year versus the amount of outward supply shown in GSTR-1. There can be instances where outward supply as per E-Way Bill is more than outward supply as per GSTR-1. That need to be checked with sale invoices and tax need to be paid, if required and similarly, if outward supply as per E-Way Bill is less than outward supply as per GSTR-1, that need to be reconciled.
- **Reconciliation of outward supply as per GSTR 1 or GSTR-3B with balance sheet:** This is an important step it would come handy while doing the income tax and GST audits and annual returns.
- **Reconciliation of ITC ledgers:** It is advisable to reconcile the GSTR-1 & 3B, cash ledger and credit ledger as per GSTN portal with the books of accounts. Tax wise Credit, cash ledger need to be matched with the respective ledgers as per books of accounts.

4. Other GST Compliance Requirements

- **Opting for Composition Scheme:** As per rule 3(3) of CGST Rules, any registered person who opts to pay tax under section 10 shall electronically file an intimation in FORM GST CMP-02, on the common portal, prior to the commencement of the financial year for which the option to pay tax under the aforesaid section is exercised. Therefore, it is to be ensured

that such person opting to pay tax under Composition scheme shall file Form GST CMP-02 before the commencement of financial year.

- **Opting out of Composition Scheme:** As per rule 6(2) of Composition Rules, if the person ceases to satisfy any of the conditions mentioned in section 10 or these rules, shall issue tax invoice for every taxable supply made thereafter and he shall also file an intimation for withdrawal from the scheme in FORM GST CMP-04 within seven days of occurrence of such event. This need to be taken care off, if the composition dealer has ceases to satisfy the conditions of composition scheme during any part of the financial year or at the beginning of financial year.

- **Opting for Quarterly Return Monthly Payment Scheme:** Though QRMP Scheme has been introduced beginning from 1st January 2021, still there are following parameters which need to be taken care off at the beginning of the new FY.
 - **Taxpayer wants to opt-out of QRMP scheme and want to become monthly filer:** Such taxpayers may change their filing frequency from quarterly to monthly from 1st February, 2021 to 30th April, 2021.
 - **Taxpayer has been assigned quarterly frequency by system even when the aggregate turnover on PAN is greater than Rs. 5 crore:** Such taxpayers are advised to opt-out of scheme for quarter Apr-Jun'21 by 30th April 2021.
 - **Taxpayer has been assigned monthly frequency by system even when the aggregate turnover on PAN is upto Rs. 5 crore:** At the time of assigning the frequency by the system, system considered the aggregate turnover of the taxpayer and the filing status of FORM GSTR-3B for the month of October 2020. If the said GSTR3B was not filed till 30th November 2020, the taxpayer were assigned to monthly frequency. The system allows the taxpayer to opt for QRMP scheme only if the last applicable return in FORM GSTR-3B, whose due date is over, is filed.

- **GST on Advance Receipts:** It is to ensure that GST has been paid on advances received from customers as on 31.03.2021.

- **Refund for FY 2018-19:** The last date to apply for a refund of GST related to FY 2018-19 is 31.03.2021. Ensure to timely make the compliances, if applicable.

- **Renewal of Letter of Undertaking:** Renewal application of LUT need to be filed online to have smooth export of goods/ services without payment of tax.
- **Job Work:** Ensure that the inputs sent out for job work activity have been received back within one year from the date of being sent out and three years in case of capital goods sent for job work. If not received back, the same will be treated as supply for GST payments and would entail interest outgo of 24%.
- **Updations in GST Registration Certificate:** Top 5 commodities and/ or services need to be updated on GST Registration Certificate system to ensure to accommodate/ add any new line of business within the year. Similarly, any updation or amendment with respect to address or constitution of business need to be ensured to be matching with the actual scenarios.

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