

Zero Rated Supply and Refund under GST

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Think Next



TODAY'S AGENDA

01

Zero Rated Supplies

02

Background and Types of Refund

03

Procedural aspect of Refund Claim

04

Critical Issues

BEFORE WE BEGIN – PLEASE PROVIDE YOUR RESPONSES:

Knowledge of GST Refund provisions? (Yes/No)

Have you filed any kind of GST refund application? (Yes/No)

If you have filed, what is your frequency of filing GST refunds? (Monthly/Quarterly/Annually)

Have you received the relevant refund filed? (Yes/No)

ZERO RATED SUPPLY AND REFUND UNDER GST

Zero Rate Supplies

ZERO RATED SUPPLIES

Definition of “Zero Rated Supply” – Section 16 of IGST Act

Zero Rated Supplies Means

Export of Goods and Services

**Export of Goods
u/s 2(5) of IGST**

Means taking goods out of India to a place outside India

**Export of Services
u/s 2(6) of IGST**

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Supply of goods or services or both for authorized operations to a SEZ Unit / Developer

For authorized operations¹

Endorsement copy from SEZ unit

¹ Notification No. 27/2023–Central Tax Dtd. 31 Jul. 2023

ZERO RATED SUPPLIES

Definition of “Zero Rated Supply” – Section 16 of IGST Act

Export of Services u/s 2(6) of IGST Act

Supplier	Located In India
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Recipient	Located Outside India
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Place of Supply	Outside India
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Establishment	Not merely establishments of a distinct person in accordance with Explanation 1 in Section 8
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Receipt of Payment
The payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India ¹

Circular No. 202/14/2023-GST dtd. 27 Oct. 2023 Payment of export proceeds in INR from the balances in the designated Special Vostro Account of the correspondent bank of the partner trading country
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Explanation 1 in Section 8	Circular No. 161/17/2021-GST dtd. 20 Sep. 2021
An establishment in India and any other establishment outside India	

REFUNDS UNDER GST

Background and Types of GST Refunds

TYPES OF GST REFUNDS

Refund of GST Charged on Outward Supplies

Export of goods or services with payment of GST

Supplies to SEZ Unit/SEZ Developer with payment of GST

Refund of GST paid on deemed export of notified goods

Refund of Unutilized ITC

Export of goods or services without payment of GST

Supplies to SEZ Unit/SEZ Developer without payment of GST

Inverted Duty Structure

Refund of Special transactions

GST Paid by Non-Resident Taxable Person

GST Paid in Advance by Casual Taxable Person

Refunds of Inward supply received by UNO or Consulates

Other Procedural Refund

Refund of Excess Payment of tax

Refund of Tax paid on account of incorrect POS

Excess Balance of Electronic Cash Ledger (Credit Ledger?)

Due to assessment, appeal or other orders / pre-deposit

CRITICAL LEGAL PROVISIONS

Section 54 of CGST Act	Provides legal framework for claiming refund
Section 2(5), Section 2(6) of IGST Act	Provides definition of export of goods and export of services
Section 16 of IGST Act	Provides definition of Zero-Rated Supply
Section 147 of IGST act r/w Not No. 48/2017 – Central Tax	Notify supplies which could be classified as deemed export
Chapter 10 of CGST Rules	Provides procedural aspect behind claiming and processing of refund application
Circulars	Circular No. 125/44/2019 – GST dtd. 18 Nov. 2019; Circular No. 135/5/2020 – GST dtd. 31 Mar. 2020 consolidates many past circulars and clarifies various aspects of filing and processing GST refunds and amended by Circular 197/09/2023 – GST dtd. 17 Jul. 2023
Documentary Requirement	Circular No. 125/44/2019 – GST dated 18 Nov. 2019

TIME LIMIT FOR FILING REFUND CLAIM

Time limit for filing refund claim

As per Section 54(1) of CGST act, application of refund shall be made before the expiry of **two years** from the 'relevant date'

Sr. No.	Type of Export	Relevant Date (Explanation 2 to Sec. 54)
Goods exported out of India		
1	Goods are exported by sea or air	Date on which the ship or aircraft in which such goods are loaded, leaves India
2	Goods exported by land	Date on which such goods pass the frontier
3	Goods exported by post	Date of despatch by the Post Office to place outside India
4	Goods supplied as deemed exports	Date on which the return relating to such deemed exports is furnished
Export of services		
5	Supply of services has been completed before receipt of payment	Date of receipt in convertible foreign exchange (or Indian rupees wherever permitted by RBI)
6	Payment received in advance before the date of issue of invoice	Date of invoice

TIME LIMIT FOR FILING REFUND CLAIM

Sr. No.	Type of Export	Relevant Date (Explanation 2 to Sec. 54)
Other Refunds		
7	Refund arising out of a judgment, decree, order of the Appellate Authority, Tribunal or any court	Date of communication of such judgment, decree, order or direction
8	Refund of Inverted Duty Structure	The end of the financial year in which claim for such refund arises
9	Refund of tax paid provisionally	Date of adjustment of tax after final assessment
10	Refund claimed by a person other than the supplier	Date of receipt of goods or services or both by such person
11	In any other case	Date of payment of tax or any other amount

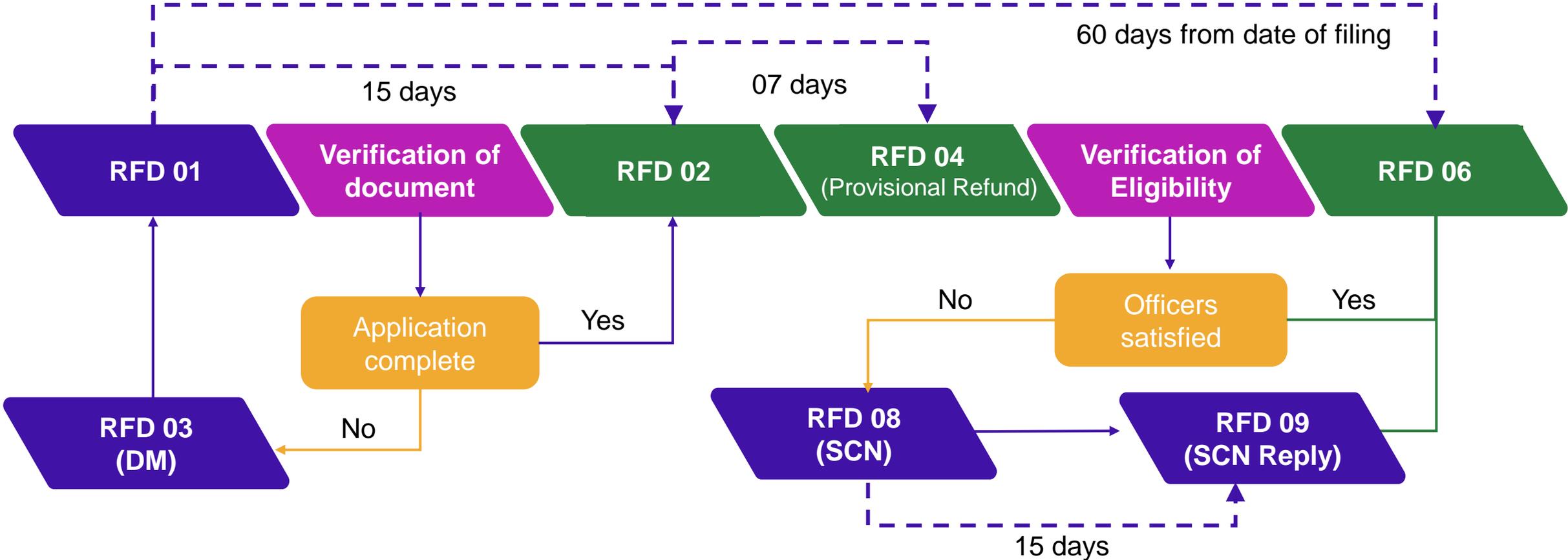
REFUNDS UNDER GST

Process for GST Refund

RELEVANT FORMS

Sr. No.	Form Name	Use
1	GST RFD 01	Online refund application form
2	GST RFD 02	Acknowledgement issued by GST officer on accepting the refund claim and supporting documents
3	GST RFD 03	Deficiency memo issued by GST officer
4	GST RFD 04	Provisional refund order
5	GST RFD 05	Payment order in relation to the refund processed
6	GST RFD 06	Final refund order
7	GST RFD 07	Withholding of refund claim on account of any outstanding demand, and release of withheld amount
8	GST RFD 08	Show Cause Notice issued by the authorities officer
9	GST RFD 09	Reply to SCN in form GST RFD 08
10	GST RFD 11	Furnishing Bond or LUT for export of goods or services without payment of IGST

TIMELINES IN PROCESSING REFUND CLAIM



09

Whether physical submission of documents mandatory within 7 days

OTHER CRUCIAL POINTS

01

Electronic Filing only

Manual filing may be allowed in exceptional cases and that too under the orders of a court or a higher appellate authority

02

Flexibility in choosing refund periodicity (months/ quarter/ half year/ year* ~ 2 years)

No specific periodicity for filing refunds. Taxpayers can plan and maximise refund amounts.

03

Clubbing of tax periods (e.g. Mar'23 & Apr'23)

Tax periods across financial years can now be clubbed (within the limitation period)

04

Unified processing

Unlike early days CGST, SGST and IGST refunds now to be issued by single authority

05

Data upload limit

10 Documents of 5 MB each allowed (pdf/jpeg). Users may plan uploads accordingly

REFUNDS UNDER GST

Refund of ITC on Exports – Critical Points

WHAT CATEGORY OF ISSUES THAT YOU MAY HAVE FACED?

Technological Issue

Relating to uploading of refund data on GST portal or any other technological issue

Legal issue

A legal provision in the GST law or rules that is creating a hindrance while claiming GST refund

Procedural issue

Refund application can't be filed or is filed but not being processed due to a procedures

REFUNDS OF ITC ON EXPORTS – CRITICAL POINTS

Place of Supply falls within India

- If the place of supply falls within India, the said services are not qualified as exports.
- Issues:
 - Officers tend to evaluate services to fall Place of supply within India
 - What should be the type of taxes charged?
 - Classification of the services is a crucial to not classify services as intermediary.
- Drafting of the contract is foremost step and hence would be imperative to analyze services and contract at that stage only.
- Circular No. 159/15/2021-GST dtd. 20 Sep. 2021 to be referred which clarifies intermediary transactions.



REFUNDS OF ITC ON EXPORTS – CRITICAL POINTS

Limitation Period of applying for Refund

- Section 54 provides that refund application must be filed within a period of 2 years from the relevant date
- Is there any relief available in this regard
- From which date the period of limitation to be computed
- No relaxation in general
- However, relaxation is available for COVID period. Notification no. 13/2022 – Central Tax dated 05th July 2022 excludes period from **1st March 2020 till 28th February 2022** for the purpose of calculating limitation period of 2 years
- Period of 2 years is directory in nature, genuine delay may be condoned ARS ENERGY PRIVATE LIMITED (2023 (12) TMI 233 - MADRAS HIGH COURT)
- Day from which such period is to be reckoned shall be excluded (Section 12 of Limitation Act)



REFUNDS OF ITC ON EXPORTS – CRITICAL POINTS

Letter of Undertaking (LUT) Conundrum

- LUT to be renewed every year. What happens if supplies are made without applying for LUT?
- Taxpayers are required to apply for LUT and then export.
- In case LUT is not applied for, one may argue that it does not alter the nature of supply.
- At best this can be a procedural lapse. The master circular support this stand. However, this becomes a contentious stand with refund authorities for litigating the same



REFUNDS OF ITC ON EXPORTS – CRITICAL POINTS

Refund Formula – Reliance on remittances

- The formula to calculate refund amount related to supply of services has a dependency on the remittances received during a particular period to arrive at the amount of ITC that can be refunded
- Formula:
- This could lead to a situation wherein, service entities having a high proportion of export related incomes gain proportionately high refund amounts despite all their invoices that might not have been realized in the first place.

Amount of Refund =

(Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover



REFUNDS OF ITC ON EXPORTS – CRITICAL POINTS

What if Remittance is not received within a period of One Year

- By furnishing LUT under Rule 96A, a registered person undertakes to discharge tax on value of export of service if the remittance is not received within a period of One year.
- What would be the course of action in such a scenario?
- Exporter may be required to pay applicable GST on export of services. Once paid the services would be considered as “Export with payment of IGST”.
- While making the payment, exporter would be eligible to utilise the accumulated input tax credit balance available with them.
- Once remittance is received, exporter may claim refund of IGST paid under the category “Excess payment of tax”.
- Exporter may argue the applicability of interest.
- Above is also clarified by Circular number 197/2023 dated 17th July 2023



REFUNDS OF ITC ON EXPORTS – CRITICAL POINTS

Dis-allowance of ITC availed on Capital Goods

- In case of export of services without payment of tax, the Net ITC to be used for the calculating the refund amount, only refers to ITC availed on Inputs and Input Services.
- In other words, ITC availed on capital goods is disallowed.
- In such scenario ITC on Capital goods would continue to accumulated unless there is other output GST liability to offset it against.
- Taxpayers may also envisage to make export of goods or services with payment of IGST and utilise the ITC on capital goods for payment of outward liability
- W.e.f. 01st October 2023, the option to export with payment of IGST would be available to notified categories.

Currently all supply of goods and services, except several goods covered under Chapter 21, 24 and 33 are, notified.



REFUNDS OF ITC ON EXPORTS – CRITICAL POINTS

Invoices split across tax periods

- The export turnover used to calculate ITC refund refers to remittances received during a period.
- Issues:
 - Remittance against a single invoice can be received on different dates
 - Remittance dates may be spread across refund periods
 - Remittance data provided in Statement 3, captures an invoice data only once.
- In case an invoice is being split across refund periods taxpayers may, if possible, choose to alter the period for which application is made
 - or
- Taxpayers may choose the refund application in which this data may be represented



OTHER REFUNDS – CRITICAL POINTS

GST on advances, transaction cancelled subsequently

- Vendor charged GST on advances and discharged the same to the exchequer
- Entire transaction got cancelled, vendor repaid the basic taxable value
- GST already discharged to the exchequer, CN cannot be passed
- Issues:
 - Can the taxpayer on his own file refund claim for the tax money deposited to the exchequer by the vendor?
- There was never a transaction, hence no taxable supply can arise here
- No question of unjust enrichment since entire GST amount is lying with the tax authorities
- M/S. Nam Estates Private Limited Vs. Jt Comm of Commercial Taxes (Appeals-I) (2024 (5) TMI 408 - Karnataka High Court)



OTHER REFUNDS – CRITICAL POINTS

Duty demanded involuntarily / under coercion can be refunded

- Akshit Petrochem Pvt. Ltd. [2024 (4) TMI 995 - Delhi High Court]
- Taxpayer needs to prove that the tax was paid under coercion

Interest / penalty charged on delayed 3B, without taxpayer's fault

- Bhole Baba Milk Food Industries Limited Vs. Union of India [2024 (4) TMI 949 - Allahabad High Court]
- Can be refunded once it is proven that the taxpayer is not at fault



OTHER REFUNDS – CRITICAL POINTS

Principle of *res judicata* applicable in refunds?

- If authorities have sanctioned a refund claim in past, are they bound to continue their decision in future?
- M/s Samsung India Electronics Private Limited [2024 (3) TMI 631 - ALLAHABAD HIGH COURT]

Invoice / DN raised after shipping bill date

- Goods sent out of India for exhibition, subsequently resulting in sales (exports)
- Goods sent out of India on sale or approval basis, subsequently approved
- Goods sent for repairs outside India for a temporary period, subsequently sold outside India
- Goods sent on lease outside India, subsequently sold outside India
- Value of supplies enhanced post exports
- Venus Jewel Vs. Union Of India [2024 (4) TMI 462 - Bombay High Court] - Refund should be allowed even if invoice is dated after shipping bill

REFUND ON SUPPLIES TO SEZ UNITS / DEVELOPERS

Conditions for Claiming Refund

01

GSTR 1 and GSTR 3B for the refund period have been filed

02

Details of supplies made to SEZ Unit/ developer disclosed properly in Table 6 of GSTR 1 and Table 3.1b of GSTR 3B

03

The applicant (Supplier) has borne the GST charged on such outward supply invoices

04

The applicant must declare that SEZ Unit/ developer has not availed ITC of tax charged on such invoice

05

Obtain endorsement from SEZ officers that the supply **has been received for authorised operations** of the SEZ Unit [for Goods (DTAP) and Services (DTASP)]

OTHER CRITICAL POINTS

Matching of ITC with GSTR 2B

Rule 36(4) of CGST Rules, 2017, restricts amount of ITC that can be availed and utilized only to the extent of ITC appearing in GSTR 2B. Hence, refund amount would also be restricted to said amount

Restriction in Value of Zero Rated Turnover of Goods

- The turnover of zero-rated supply of goods is **restricted to 1.5 times the value of like goods domestically supplied** by the same or, similarly placed, supplier, as declared by the supplier, whichever is less
- This not only restricts the amount that could be claimed as refund, but could give rise to valuation related issues

Realization of Sale proceeds of Export of Goods

In case of refund of unutilized ITC on account of export of goods or of IGST paid on export of goods has been approved and remitted, but the sale proceeds have not been realised within the period stipulated under FEMA then such refund needs to be remitted back to the processing authority

COMMON QUERIES RAISED BY OFFICERS

01 Payment of tax by the supplier to the exchequer (confirmation of tax paid - GSTR 1 vs 3B).

02 Eligibility of ITC – Travel agent, insurance broking, employee benefit related (training, hotel accommodation), CSR expenses (prior to 1 October 2023), airfreight or other travel costs.

03 Whether conditions of Section 2(6) fulfilled? - POS, Intermediary, etc.

04 SEZ endorsed invoice copies.

05 Short remittances due to deduction of bank charges and withholding tax.

06 Submission of e-BRCs in the absence of FIRC.

BEFORE WE GO...

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