

GST: REFUND OF UNUTILIZED INPUT TAX CREDIT ACCUMULATED DUE TO INVERTED DUTY STRUCTURE

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Sec 54 of the CGST Act 2017 provides for claiming refund of tax and interest, if any paid on such tax or any other amount. The refund may be claimed of any unutilized input tax credit also accumulated due to the rate of tax on inputs being higher than the rate of tax on outward supplies.

For example, in case of coal sectors, the unutilized input tax credit is growing day by day due to the fact that –

- a) the rate of GST on its main output coal is 5 %.
- b) The rates of GST on its inward supplies are more than 5 %. For example, the rate of GST on explosive and mining activities is 18 %. The rate of GST on coal transportation is 12 % if the supplier opts to claim ITC. The rate of GST on major stores and spares is 18 %. The rate of GST on capital goods like HEMMs varies from 18 % to 28 %.

The accumulation of such unutilized input tax credit is due to procurement of Capital goods, inputs and input services. However, in view of the provisions contained in Rule 89 of CGST Rule 2017, there is a general opinion that, as per rule, the refund of input tax credit accumulated on account of procurement of Capital goods and input services can't be claimed and that the refund can be claimed of input tax credit accumulated on account of procurement of inputs only.

Let us examine what are the provisions exactly made in this regard in Rule.

The provisions contained in CGST Rule 2017 in this regard: - The provisions of CGST rule 2017 in this regards are as under:-

Sub-rule (5) of rule 89 of the principal CGST rule reads as under:-

“In case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formulae:-

Maximum refund amount = {(Turnover of inverted rated supply of goods) X Net ITC} / Adjusted total turnover} – tax payable on such inverted rated supply of goods.

For the purpose of this rule, the expression “Net ITC” and “Adjusted total turnover” shall have the same meaning as assigned to them under sub-rule (4).”

Clause (B) of Rule 89(4) defines Net ITC as under:-

“**Net ITC**” means input tax credit availed on **input** and **input services** during the relevant period”.

Clause (E) of Rule (4) defines Adjusted total turnover as under:-

“**Adjusted total turnover**” means the turnover in a state or union territory, as defined under sub-section (112) of Section 2, excluding the value of exempt supplies other than Zero rated supplies, during the relevant period.

Sub-section (112) of Section 2 defines “turnover in State” or “turnover in Union territory” as under:-

“turnover in State” or “turnover in Union territory” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess.”

On analyzing the definition of “Net ITC” it is observed that it includes ITC availed on input and input services only. The ITC accumulated on account of procurement of Capital goods has not been included in this definition.

Sub-rule (5) of rule 89 was later amended vide notification no. 21/2018 - Central Tax dated 18.04.2018. The amended Sub-rule (5) of rule 89 reads as under: -

“In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

Explanation:- For the purposes of this sub-rule, the expressions –

- a) “**Net ITC**” shall mean input tax credit availed on **inputs** during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and
- b) “Adjusted Total turnover” shall have the same meaning as assigned to it in sub-rule (4).”

So, the definition of Net ITC as per amended Sub-rule (5) of rule 89 allows for refund of ITC accumulated on account of **inputs** only. The earlier provision, prevailing prior to this amendment allowing refund of ITC accumulated on account of input services, was deleted.

Further, for clause (E) sub-rule (4) of Rule 89, the following clause was substituted vide notification no. 39/2018 - Central tax dated 04.09.2018:-

“**Adjusted Total Turnover**” means the sum total of the value of-

- a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and
- b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services,

excluding-

- i. the value of exempt supplies other than zero-rated supplies; and
- ii. the turnover of supplies in respect of which refund is claimed under sub-rule

(4A) or sub-rule (4B) or both, if any, during the relevant period.”

So, from analysis of the above provisions contained in Sub-rule (5) of Rule 89 of the CGST Act 2017, it is observed that this rule, at present, allows for refund of ITC accumulated due to inverted duty structure on account of procurement of input only.

In this context, it would be pertinent to mention here that the major source of accumulation of ITC due to inverted duty structure in coal sectors is on account of input services comprising of outsourced mining activities. So, as per the above provisions, refund of ITC accumulated on account of procurement of capital goods and inputs services cannot be claimed.

Now, let us examine the provisions contained in this regard under Sec 54 of the CGST Act 2017.

The provisions as contained in Sec 54 of CGST Act 2017

Sub-section (3) of Sec 54 of the CGST Act 2017 (herein after referred to as Act/) reads as under:-

“Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilized **input tax credit** at the end of any tax period.

Provided that no refund of unutilized input tax credit shall be allowed in cases other than -

- a) Zero rated supplies made without payment of tax;
- b) Where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated of fully exempt supplies) except supplies of goods and services or both as may be notified by the Government on the recommendation of the Council.

Provided further that no refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or

claims refund of the integrated tax paid on such supplies.”

In view of above provisions, a registered person may claim refund of unutilized **input tax credit** in case of zero rated supplies made without payment of tax and that in cases Where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies subject to compliance of conditions stated in proviso.

Sub-section (62) of Sec 2 of the Act defines “input tax” as under:-

“**input tax**” in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—

- (a) the integrated goods and services tax charged on import of goods;
- (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
- (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
- (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
- (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,”

Further sub-sec (63) of Sec 2 defines the term “input tax credit” as under:-

“**input tax credit**” means the credit of **input tax**,”

Sub-section (52) of Sec (2) defines goods as under:-

“**goods**” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

On plain reading of the aforesaid definition of the goods, it implies that the goods include both capital as well as inputs [goods other than Capital goods as defined u/s 2(59) of the Act].”

As stated under clause (1) of Explanation to Sec 54, “refund” includes “refund” includes 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, or refund of tax on the

supply of goods regarded as deemed exports, or **refund of unutilized input tax credit as provided under sub-section (3).**

So on combined reading of the above provisions of the Act, it is clear that the refund of unutilized input tax credit can be claimed for IGST, CGST, SGST, UTGST etc charged by the supplier on Capital goods, inputs and input services lying unutilized at the end of any tax period due to the reasons stated in Sec 54(3).

The above provisions of the Act are summarized as under –

- a) A registered person may claim refund of input tax credit accumulated due to inverted duty structure as per provisions of Sec 54(3).
- b) Refund includes refund of **unutilized input tax credit** on account of inverted duty structure as per the definition of “refund” stated in clause (1) of explanation to Sec 54.
- c) “**Input tax credit**” means the credit of **input tax** {refer Sec 2(63) of the Act}.
- d) “**input tax**” means the CGST, SGST, IGST, UTGST etc charged by the supplier to a registered person for supply of goods or services or both. {refer Sec 2(62) of the Act}.
- e) “**Goods**” includes both Capital Goods as well as inputs (other than capital goods) {refer Sec 2(59) of the Act}.

So, from combined reading of above provisions of the Act, it can be concluded that –

- a) The provisions of the Act allows refund of Input tax credit accumulated due to inverted duty structure i.e. tax paid on Capital goods, inputs and input services being higher than tax rate on output.
- b) The rule made for refund of input tax credit due to inverted duty structure restricting only to “inputs” only is not in consonance with the provisions of the Act.

The purpose of Rule is generally to provide machinery (procedure) for smooth implementation of the provisions contained in the Act and not to superimpose condition which is not there in the Act itself. It is a high time that the Government should examine the aforesaid issues in proper perspective, so that the refund provisions made in the rules becomes in line with the provisions of the Act & workable in order to avoid litigations.