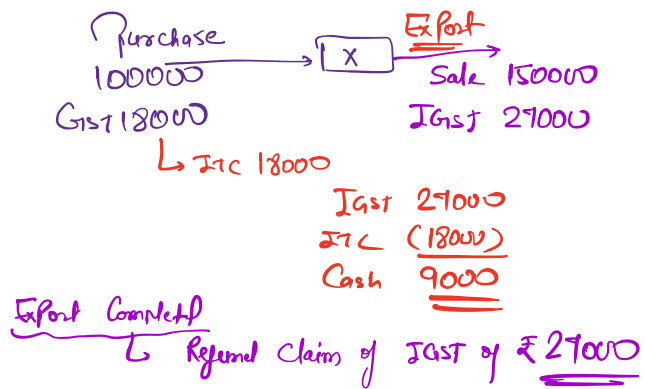
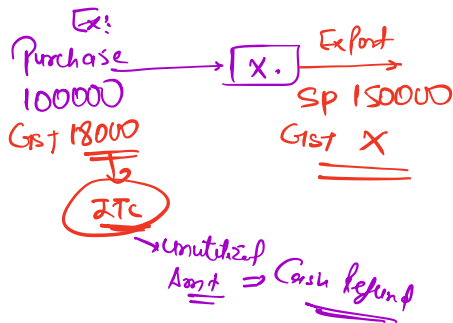
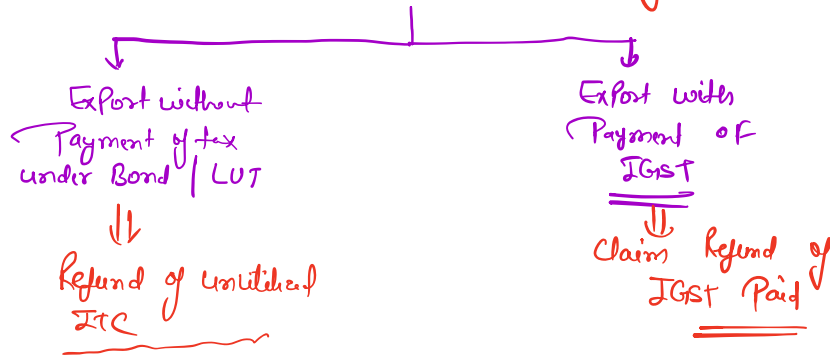


sec 16 of IGST

Zero Rated Supply
[Export + Supply to SEZ]



Doctrine of unjust Enrichment

↳ presumption that Incidence of burden Passed on to the Customer

REFUND OF TAXES

Section 54	Refund of Tax
Section 55	Refund to UN Bodies, Embassies, etc.
Section 56	Interest on Delayed Refunds
Section 57	Consumer Welfare Fund
Section 58	Utilization of Fund
Section 15 [IGST]	Refund of Integrated tax paid on supply of goods to Tourist leaving India

Section 54 Refund of Tax

A. Situation leading to refund claims

Refund may be due to situations discussed U/s 54 or U/s 77 of CGST Act and the requirement of submission of prescribed relevant documents as is an indicator of the various situations that may necessitate a refund claim. A claim for refund may arise on account of any one of the following:

- Export of goods or services (Unjust enrichment – No)
- Supplies to SEZs units and developers (Unjust enrichment – No)
- Deemed exports (Unjust enrichment – Yes)
- Casual Taxable Person (CTP)/Resident Taxable Person (NRTP) (Unjust enrichment – Yes)
- Refund of taxes on purchase made by UN or Embassies etc. (Unjust enrichment – No)
- Refund arising on account of judgement, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court (Unjust enrichment – Yes)
- Refund of accumulated ITC on account of inverted duty structure (Unjust enrichment – No)
- Finalisation of provisional assessment (Unjust enrichment – No)
- Refund of pre-deposit (Unjust enrichment – No)
- Excess payment due to mistake (Unjust enrichment – Yes)
- Refunds to International Tourists of GST paid on goods in India and carried abroad at the time of their departure from India (Unjust enrichment – No)
- Refund on account of issuance of refund vouchers for taxes paid on advances against which, goods or services have not been supplied (Unjust enrichment – No)
- Refund of CGST and SGST paid by treating the supply as intra-State supply which is subsequently held as inter-State supply and vice-versa (Unjust enrichment – No)
- However, refund of unutilized ITC shall not be allowed if The goods exported out of India are subjected to export duty;
- The supplier of goods or services or both avails of drawback in respect of CGST or claims refund of the IGST paid on such supplies.

Time limit within which refund claim can be filed

- ❖ Any person claiming refund of any tax, interest, if any paid on such tax or any other amount paid by him, may make an application before the **expiry of 2 years from the 'Relevant Date'** in such form and manner as may be prescribed [Section 54 (1)]
- ❖ A registered person may claim refund of any unutilized ITC in case of zero rated supplies or accumulated ITC on account of inverted duty structure at the end of any tax period [Section 54 (3)]

D. Application for refund of tax, interest, penalty, fees or any other amount [Rule 89]

❖ Any person, except the persons covered by notification issued under section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application in Form GST RFD-01 electronically through GST common portal. [Rule 89 (1)]

E. Documents for filing refund claim [Sec. 54 (4)]

- The application for refund shall be accompanied by –
 - a) Such documentary evidence as may be prescribed to establish that a refund is due to the applicant, and
 - b) Such documentary or other evidence (including the documents referred u/s 33) as the applicant may furnish to establish that the amount of tax and interest or any other amount paid in relation to which refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person.
- Self-Declaration: If the claimed refund amount is less than Rs. 2,00,000, it is not necessary for the applicant to furnish any documentary and other evidences. Instead, he may file a selfdeclaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person. The application shall be accompanied by any of the following documentary evidences, in Annexure I in Form GST RFD-01 as applicable, to establish that a refund is due to the applicant namely:

How to Calculate Refund of ITC in Case of Zero-Rated Supply

$$\text{Refund Amount} = \frac{\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services}}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

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 other than the ITC availed for which refund is claimed under Deemed export (Rule 89 (4A)) or Merchant export (Rule 89 (4B)) or both.
- (C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking, other than the turnover of supplies in respect of which refund is claimed under Deemed export (Rule 89 (4A)) or Merchant export (Rule 89 (4B)) or both.
- (D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;
- (E) "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. {Substituted vide Notification 39/2018-CT, dated 04.09.2018}

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

As per Rule 89 (5), In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula –

$$\text{Maximum Refund Amount} = \{(\text{Turnover of inverted rated supply of goods \& Services}) \times \text{Net ITC} \div \text{Adjusted Total Turnover}\} - \text{tax payable on such inverted rated supply of goods \& Services}$$

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).
 {Substituted vide Notification 26/2018-CT, dated 13.06.2018}

ABC Ltd. furnishes following information. Please compute maximum refund eligible (all the amount are in INR)

ITC availed on goods	2,50,000
ITC availed on Services	50,000
ITC availed on capital goods	2,00,000
Taxable value of goods exported without payment of tax	15,00,000
Taxable value of goods supplied within India	35,00,000
Taxable value of services exported (includes 50,000 received in advance)	5,50,000
Taxable value of services supplied within India	5,00,000

Answer:-

Net ITC i.e. ITC availed on goods & services during the relevant period (2,50,000+50,000)	3,00,000
Turnover of zero rated supply of goods i.e. goods exported without payment of tax	15,00,000
Turnover of zero rated supply of services i.e. services exported without payment of tax (5,50,000-50,000)	5,00,000
Total Adjusted Turnover (15,00,000+35,00,000+5,00,000+5,00,000)	60,00,000
Maximum Refund $\{(15,00,000 + 5,00,000) \times 3,00,000 \div 60,00,000\}$	1,00,000

ABC Ltd. furnishes following information. Please compute maximum refund eligible (all the amount are in INR)

ITC availed on goods	3,30,000
ITC availed on Services	66,000
ITC availed on capital goods	2,00,000
Turnover of inverted rated supply of goods & services (taxable @ 5%)	30,00,000
Turnover of other supplies of goods and services (including exempt supplies Rs. 5,00,000)	15,00,000

Answer:-

Net ITC i.e. ITC availed on goods & services during the relevant period (3,30,000+66,000)	3,96,000
Turnover of inverted rated supply of goods & services	30,00,000
Total Adjusted Turnover (30,00,000+10,00,000)	40,00,000
Tax paid on inverted rated supply of goods & services (30,00,000*5%)	1,50,000
Maximum Refund $\{(30,00,000) \times 3,96,000 \div 40,00,000\} - 1,50,000$	1,47,000

F.Y. 21-22

- ① Total ITC Claimed ₹ 15,00,000
(Including CG ITC of ₹ 5,00,000)
- ② Out of ITC Claim Refund claimed under Deemed Export ₹ 2,00,000
- ③ Turnover of Export of goods ₹ 2 Cr
(Includes Deemed export turnover on which Refund claim ₹ 50 lacs)
- ④ Payment received for Export of Services ₹ 3 Cr
(Including Payment received in advance ₹ 40 lacs on which Services Not Completed)
- ⑤ Turnover of Domestic Supply ₹ 1 Cr
(Includes Exempt Supply ₹ 25 lacs)
- ⑥ Unutilized Balance of ITC at end of year ₹ 2,00,000

Cal. Max Amt of Refund under rule 89 and How Much Refund we can claim in RFD-OL

Sol

$$\text{Max Refund} = \text{Net ITC} \times \frac{\text{Zero Rated Turnover of Goods \& Services}}{\text{Adjusted total turnover}}$$

① <u>Net ITC</u> →	Total ITC claimed	₹ 15,00,000
	less: CG ITC	(5,00,000)
	Refund on Deemed export	(2,00,000)
	Net ITC	<u>8,00,000</u>

② Zero Rated Supply Turnover under Bond

(i) Goods → Export turnover	2 Cr
less: Deemed export	(0.50)
	<u>1.50 Cr</u>

(ii) Services → Payment received	3 Cr
less: Advance Recd.	0.40 lacs
	<u>2.60 Cr</u>

② Adjusted total turnover

Total Zero Rated of Goods	1.50 Cr
Zero Rated Smr	2.60 Cr
+ Domestic Supply	1 Cr
less: Exempt supply	(0.25 Lacs)

Total Adj. Turnover 4.85 Cr

$$\text{Max Refund} = 8,00,000 \times \frac{(1.50 + 2.60)}{4.85}$$
$$= 616288$$

Unlabel Bal of ITC = 2,00,000

RFD of Refund claim \rightarrow Max 2,00,000

Ex: Refund of ITC in case of Invested duty structure

Total ITC Claimed ₹ 5,00,000 (Infl = 12%)
on Inputs

Turnover of Invested duty structure Goods 12,00,000 @ 5%

Turnover of Other Goods 24,00,000 @ 12%

$$\text{Max Refund} = 5,00,000 \times \frac{12,00,000}{36,00,000} - (12,00,000 \times 5\%)$$

$$= 133,333 - 60,000$$

$$\text{Max Refund} = 73,333$$

admissible

H. Order of Refund [Section 54 (5), (7) read with rule 92]

- ❖ If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order in FORM GST RFD – 06 and the amount so determined shall be credited to the Fund referred to in section 57. [Sec. 54 (5)]
- ❖ The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects. [Sec. 54 (7)]

Extract of CGST Rule 92

- The proper officer shall issue the order of sanctioning the amount in Form GST RFD-06 stating:
 - The amount of refund due to the applicant,
 - The amount provisionally refunded to the applicant (if any),
 - The amount adjusted against any outstanding demand,
 - The balance amount refundable to the applicant.
- In case the whole amount of refund is adjusted against any outstanding demand under this Act or under any of the existing law an order mentioning the details of such adjustment shall be issued in Part A of Form GST RFD-07.

I. Grant of Provisional refund [Section 54 (6) read with rule 91]

Irrespective of Sec. 54 (5), 90% of refund may be sanctioned on provisional basis in such manner and subject to such conditions, limitations and safeguard as may be prescribed (paid to the claimant) without verification of documents if following conditions are satisfied:

- Claim for refund on account of zero-rated supply
- Made by registered persons
- Other than such category of registered person as may be notified by the government

Remaining 10% may be refunded after due verification of documents furnished by the applicant.

Extract of CGST Rule 91

- The provisional refund of 90% shall be granted to the applicant if the person claiming the refund has not been prosecuted for any offence under the act or under an existing law where the amount of tax evaded exceeds two hundred and fifty lakh rupees during any period of five years immediately preceding the tax period to which the claim for refund relates.
- The proper officer shall sanction such refund in Form GST RFD-04 within seven days from the issue of acknowledgement of application of refund in Form GST RFD-02
- The payment advice of the refund sanctioned shall be issued by the proper officer in Form GST RFD-05 and the same shall be credited in his bank account.

Section 55 Refund of UN Bodies, Embassies etc. [Sec. 55 read with Rule 95 (2)]

1. Applicability:
 - Specialised Agency of the United Nations Organization or
 - Consulate or Embassy of foreign countries
 - Any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947
 - Any other notified person
2. Application for refund shall be made in Form GST RFD-10 once in every quarter. Also to file a statement of inward supplies of goods or services or both in Form GSTR 11. (Entities covered U/s 55, shall make an application for refund of tax paid by it on inward supplies, to the jurisdictional tax authority, in such form and manner as specified, before the expiry of 18 months from the last date of the quarter in which such supply was received)
3. Acknowledgement for Application of refund shall be given in Form GST RFD-02.
4. Condition for Refund:
 - a. The inward supplies of goods or services or both were received from a registered person against a tax invoice.
 - b. Name and GSTIN or UIN of the applicant is mentioned on the tax invoice and
5. In case of inconsistent provisions, International Treaty will prevail over rules.

Section 56 Interest on Delayed Refunds

In case of refund arising from an order passed by the adjudicating authority, appellate authority or appellate tribunal	Government shall pay an interest of 9% from the date immediately after the expiry of 60 days from the date of receipt of application of refund.
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Other Cases	The Government shall pay an interest of 6% from the date immediately after the expiry of 60 days from the date of receipt of application of refund.
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Section 57 Consumer Welfare Fund

The Government shall constitute a Fund, to be called the Consumer Welfare Fund and there shall be credited to the Fund,—

- (a) the amount referred to in sub-section (5) of section 54;
- (b) any income from investment of the amount credited to the Fund; and
- (c) such other monies received by it,

in such manner as may be prescribed.

Section 58 Utilization of Fund

- (1) All sums credited to the Fund shall be utilised by the Government for the welfare of the consumers in such manner as may be prescribed.
- (2) The Government or the authority specified by it shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

Section 15 (IGST) Refund of Integrated Tax paid on supply of goods to tourist leaving India

For the purpose of this Section 15 of IGST Act, the term "tourist" means a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes. Refund of tax shall be made in the prescribed manner.

Question & Answer

Q1. What are the cases under which refund of unutilized input tax credit shall not be allowed?

A. As per first proviso to Sec. 54 (3), no refund of unutilized ITC shall be allowed except in following cases:

- a. Zero rated supplies made without payment of tax, or
- b. 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 or exempt supplies). However, such refund should not relate to supply of goods or services or both as may be notified by the government on recommendation of GST council.

Thus, except the above two exceptions, refund of unutilized credit will not be allowed.

Q2. Whether refund of unutilized ITC can be allowed in case where export of goods is subject to export duty?

A. As per second proviso to Sec. 54 (3), no such refund will be allowed in case goods exported out of India are subject to levy of export duty.

Q3. Whether refund of unutilized ITC can be allowed in case where exporter of goods or services claims drawback or refund of taxes paid on such supplies?

A. The export of goods has to be free from the effect of any taxes. It is important to note that refund of unutilized credit is only one of the methods to free export transactions from the burden of taxes. The other 2 methods are drawback of taxes or refund of taxes paid on such supplies. As per second proviso to sec. 54 (3),

refund of input taxes shall not have allowed in case supplier of goods or services avail drawback of central taxes or claims refund of IGST paid on such supplies.

Q4. Whether the principle of unjust enrichment be applicable to export?

A. The principle of unjust enrichment will not be applicable in case of export of goods and services.

Q5. In case of rejection of refund application, what would happen to the amount debited from Input Tax Ledger?

A. As provided in rule 93 (2), in case of rejection of refund application wholly or partly, the amount of claim rejected will be re-credited in the electronic ledger of the applicant.

Example: A Ltd. made an application of refund of unutilized ITC amounting to Rs. 7 Lacs. A Ltd. reduced the balance of Rs. 7 lacs from their electronic credit ledger. The proper officer was not satisfied with claim of Rs. 2 Lacs. He approved the claim of Rs. 5 lacs and rejected the claim of Rs. 2 lacs. Rs. 5 lacs will be credited to the bank account of A Ltd and Rs. 2 lacs will be re-credited to electronic credit ledger of A Ltd.

Q6. ABC Ltd., filed an application for refund of tax amounting Rs. 9,00,000 on 1st Nov'17. The refund was granted on 25th Jan'17. Compute the interest payable?

A. Interest is payable after 60 days which is completing on 31st Dec'17 (60 days from 1st Nov'17). So, interest is payable for 25 days @ 6% i.e.

Rs. 9,00,000 * 6% * 25/365 = Rs. 3,698

Q7. Mr. A has opted for Export against LUT / Bond without payment of taxes. LUT/ Bond issued by the Jurisdictional Officer is valid till 31st March 2018. He has exported goods against such LUT / Bond till December 2017. Can he start to export goods against payment of IGST from January 2018?

A. Yes, even though validity of LUT / Bonds is till 31st March 2018, Mr. A can start exporting goods against payment of IGST from January, 2018.

Q8. Mr. A is supplying goods to SEZ Unit. Whether he has to charge IGST on supply of goods?

A. As per the provision of section 16 of IGST Act, 2017, Supply to SEZ Unit are Zero Rated Supplies.

Therefore, in such case Mr. A can either supply goods against payment of IGST (which can be claimed as refund) or he can supply goods without payment of IGST (against LUT /Bond).

Q9. A person had submitted Bank Guarantee for Issue of Bond for export of goods without payment of tax. He was granted Bond with a validity period upto 31st March 2018. However, in view of Notification No. 37/2017 – Central Tax dated 4th October 2017, he wants to submit Letter of Undertaking and get the bond released which was submitted earlier. Can he do so.

A. Yes, he can submit a Letter of Undertaking as per the guidelines issued vide Notification No. 37/2017 – Central Tax dated 4th October 2017 and get the bond submitted earlier released.

Q10. Can goods be sold to EOU without payment of GST as was being done prior to implementation of GST?

A. No, goods cannot be supplied to EOU without payment of taxes, however, as per Notification No. 48/2017 – Central Tax dated 18th October 2017, domestic supplies to holder of Advance Authorization / EPCG and EOUs would be treated as deemed exports under section 147 of CGST / SGST Act and refund of tax paid on such supplies can be claimed by the supplier.

Following supplies have been treated as deemed exports under section 147 of the CGST Act:

Sr. No.	Description of supply
i.	Supply of goods by a registered person against Advance Authorization
ii.	Supply of capital goods by a registered person against Export Promotion Capital Goods Authorization.
iii.	Supply of goods by a registered person to Export Oriented Unit
iv.	Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017 – Customs, dated the 30th June, 2017, (as amended) against Advance Authorization.

Q11. Will unutilized ITC at the end of the financial year (after introduction of GST) be refunded?

A. There is no such provision to allow refund of such unutilized ITC at the end of the financial year in the GST Law. It shall be carried forward to the next financial year.

Q12. Are SEZ Units liable to pay taxes on their inward supplies? Who will be eligible for refund of taxes paid on supplies to SEZ?

A. No. SEZ units shall not be charged with taxes for supplies made to them.

In respect of supplies to a SEZ unit or a SEZ developer, the application for refund shall be filed by the –

- (a) supplier of goods after such goods have been admitted in full in the SEZ for authorised operations,
- (b) supplier of services along with such evidence regarding receipt of services for authorised operations; as endorsed by the specified officer of the Zone.

Q13. Can the refund of balance in cash or credit ledger be claimed?

A. Yes, as per provisions of Section 49(6), the balance of cash or credit after payment of tax, interest, penalty, fee or any other amount payment refund can be claimed as per provisions of Section 54. Once the refund is claimed, the amount of credit of CGST/SGST/IGST (as the case may be) would be reduced to that extent.

Q14. Whether separate applications need to be filed for refund in case of export of goods and export of services?

A. Yes, there shall be separate application and different procedure for refund of export of goods and export of services.

Q15. Who can file an application for refund in case of deemed export?

A. In terms of third proviso to Rule 89 inserted vide Notification No. 47/2017 – Central Tax dated 10.10.2017, application for refund in case of deemed export can be filed by:

the recipient of deemed export supplies; or

the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund