

# REFUND ON CANCELLATION/RETURN OF SUPPLY

**GST REFUNDS –  
MUCH WIDER SCOPE THAN YOU  
THOUGHT  
ON 01<sup>ST</sup> JUNE 2020**

**FINANCE**



**AGMS & CO**  
Chartered Accountants  
ADVISORY | COMPLIANCE | LITIGATION

# REFUND ON CANCELLATION/RETURN OF SUPPLY

## SCENARIOS

1. An advance is received by a supplier for a Service contract which subsequently got cancelled and invoice was issued before supply and paid GST thereon.
2. An advance is received by a supplier for a service contract which subsequently got cancelled and receipt voucher was issued and paid the GST on such advance received.
3. Goods supplied by a supplier under cover of a tax invoice are returned by the recipient.

# WHAT IS REFUND

*"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 unutilised input tax credit as provided under sub-section (3).*

Refund means refund of any amount of tax, interest, **cess, penalty, pre deposit** or any other amount paid to the government, where actual tax liability was either less or had paid the tax which was not leviable. In such situations, the person from whom the excess tax was collected is entitled to claim refund of excess amount paid by him. In order to claim any refund, the same should have been paid to the government.

# REFERENCE OF CONSITUTION FOR REFUND.

As per article 300A of the Constitution of India - The credit standing in favour of an assessee is property and the assessee could not be deprived of the said property save by authority of law in terms of article 300A of the Constitution of India. This article helps the assessee to claim the refund in case **law extinguishes** the said right to property of the assessee.

As per Article 265 of our Constitution- no tax shall be levied or collected except by authority of law. Thus, it can be rightly concluded, that any illegally collected amount will have to be refunded to the person from whom the same was collected as retention of the same would be violation or ultra vires the Article 265 of Constitution of India.

# SITUATIONS LEADING TO REFUND CLAIMS

- **54(8)(C) REFUND OF TAX PAID ON A SUPPLY WHICH IS NOT PROVIDED, EITHER WHOLLY OR PARTIALLY, AND FOR WHICH INVOICE HAS NOT BEEN ISSUED, OR WHERE A REFUND VOUCHER HAS BEEN ISSUED;**
- **REFUND OF EXCESS PAYMENT OF TAX.**
- **THE TAX AND INTEREST, IF ANY, OR ANY OTHER AMOUNT PAID BY THE APPLICANT, IF HE HAD NOT PASSED ON THE INCIDENCE OF SUCH TAX AND INTEREST TO ANY OTHER PERSON.**

# What are the restrictions / prohibitions to claim refund?

**1. Subject to Export Duty**

**2. Availed drawback**

**3. No refund of unutilised ITC** except zero rate supplies without payment of tax and Inverted duty structure.

**4. Minimum Threshold** - Where the refund amount is less than one thousand rupees.

**5. Default** - Defaulted in furnishing any return or is required to pay any tax, interest or penalty, which has not been stayed by any court, tribunal or appellate authority, the proper officer may:

A. withhold

B. deduct from the refund due.

**6. Government, on the recommendation of Council,** refund of unutilised ITC will not be allowed {see Notification No. 5 / 2017 – Central Tax (Rate), dated 28.06.2017}

# Who can claim the refund ?

Any person can claim the GST refund i.e. for claiming the GST refund irrespective of the fact whether that person is a registered person or unregistered person as stated in section 54(1).

# What is the time limit to claim refund?

Before the expiry of **two** years from the **relevant date**.

‘The relevant date’ means -

1. **Any other case:** The date of payment of tax.



# DOCUMENTS THAT SHALL BE ACCOMPANIED WITH APPLICATION

1. That a **refund is due** to the applicant as may be prescribed.
2. To establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such 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.**

**Only Declaration** where the amount claimed as **refund < 2Lakh** , certifying that the incidence of such tax and interest had not been passed on to any other person else CA/Cost Accountant certificate

# HOW TO PROVE THAT REFUND IS DUE?

1. Invoice/Receipt Voucher.
2. Credit Note/Refund Voucher.
3. Email/other communication for confirmation of cancellation of contract/goods returned.
4. Confirmation account showing the above transactions.
5. Copy of GSTR1.
6. Copy of GSTR 3B.
7. That the incidence of such tax had not been passed.

**List of all statements/declarations/undertakings/certificates and other supporting documents to be provided along with the refund application as prescribed by circular 125/44/2019-GST DATED 18-11-2019**

Sl. No.	Type of Refund	Declaration / Statement / Undertaking / Certificates to be filled online	Supporting documents to be additionally uploaded
9	Refund of excess payment of tax	Statement 7 under rule 89(2)(k)	
		Undertaking in relation to sections 16(2)(c) and section 42(2)	
		Self-declaration under rule 89(2)(1) if amount claimed does not exceed two lakh rupees, certification under rule 89(2)(m) otherwise	

# IS CREDIT NOTES ANOTHER FORM OF REFUND?

- Section 34 of the CGST Act, 2017 provides for issuance of credit notes for post supply discounts or if goods are returned within a stipulated time PROVIDED that the incidence of tax and interest on such supply has been passed on to any other person.
- When such credit notes are issued, it would be adjusted with reduction in output liability of the supplier after verifying the corresponding reduction in the input tax credit availed by the recipient.
- In such a scenario, the excess tax paid by the supplier needs to be refunded. However, instead of refunding it outright, it is sought to be adjusted.
- Section 43 of the CGST Act, 2017 provides for procedure for reduction in output liability on under the general refund provisions contained in Section 54 of the Account of issuance of such credit notes. This is another form of refund by adjustments in the output tax liability. Such refund is not governed under the general refund provisions contained in Section 54 of the CGST Act, 2017

# Unjust Enrichment

**Hon'ble Supreme Court decision in case of Mafatlal Industries Ltd vs Union of India 1997 (89) ELT 247 (S.C).** - Principle of unjust enrichment. i.e. One person cannot be doubly benefited i.e. on the one hand, collecting duty from buyer and on the other hand obtaining refund of such duty from the revenue.

Every claim of refund (barring specified exceptions) needs to pass the test of unjust enrichment.

Every such claim if sanctioned is first transferred to the Consumer Welfare Fund.

# Unjust Enrichment

**Refund claim  
< Rs.2 Lakhs**

Self Declaration

**Refund claim  
> Rs.2 Lakhs**

Certificate from a  
Chartered  
Accountant/Cost  
Accountant

**That the incidence of tax has not been passed to any other person**

# CLAIM BY A PERSON WHO HAS BORNE THE INCIDENCE OF TAX



- Any tax collected by the taxable person more than the tax due on such supplies must be credited to the Government account. The law makes explicit provision for the person who has borne the incidence of tax to file **refund claim in accordance with the provisions of Section 54 of the CGST Act, 2017.**

# WHAT IS PASSING OF INCIDENCE OF TAX IN INDIRECT TAX

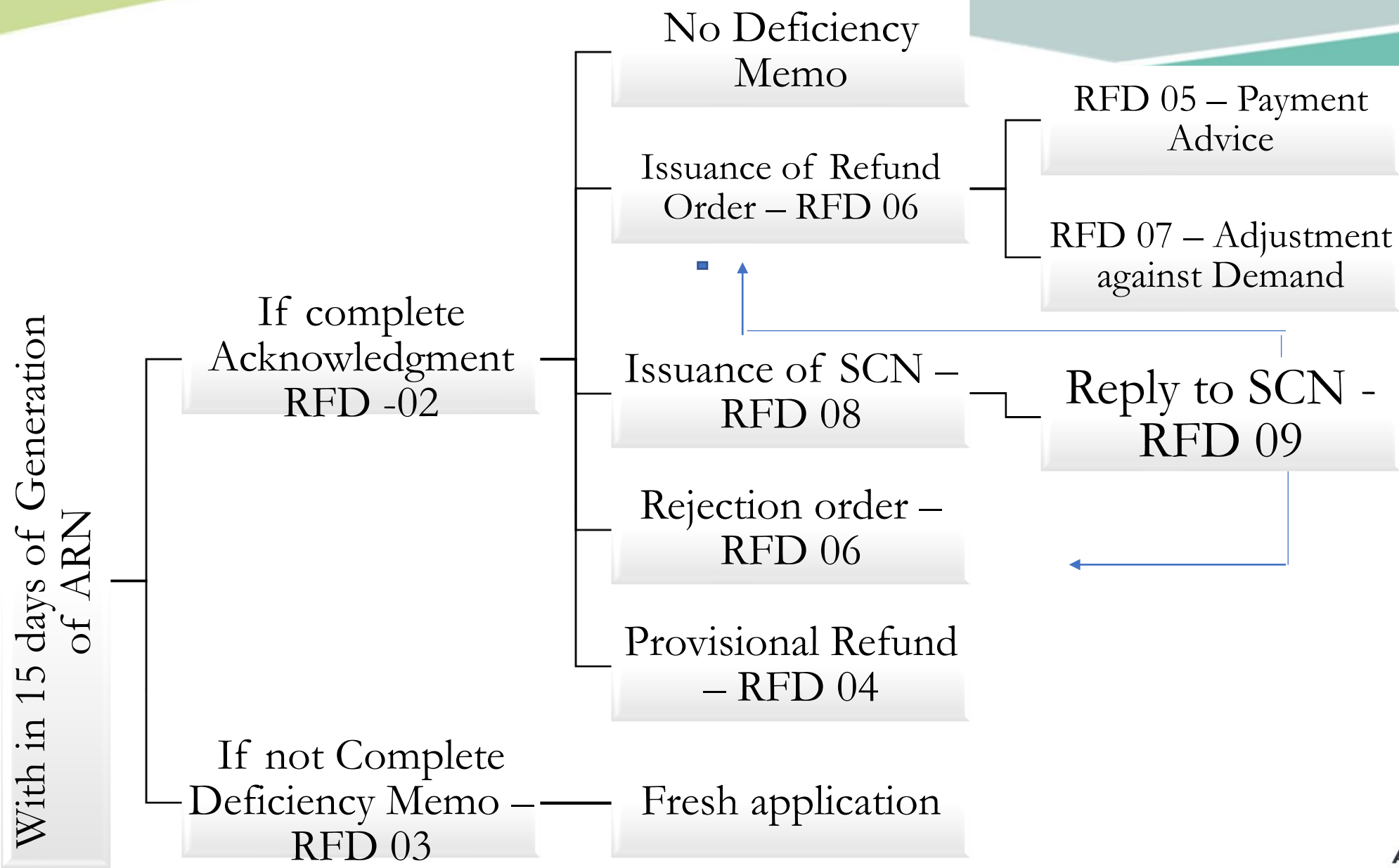
Passing of incidence of tax in Indirect Tax means who ultimately bears the burden of the tax and the burden of proving that same has been passed or not lies with the person who has paid the tax.

## How the same is proved that the same has been passed or not?

1. Proof of tax paid.
2. Certificate issued by a Chartered Accountant/Cost Accountant that assessee had borne burden of duty and is eligible for refund.
3. Confirmation of account along with own bank statement showing the fact that the tax has not been collected from customer.
4. Affidavit from customer that credit of the tax has not been claimed by him.



# Procedure for refund



# **CIRCULARNO. 137/07/2020-GST [CBEC-20/06/04-2020-GST], DATED 13-4-2020**

- 1. In cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST RFD-01.**
- 2. The taxpayer can apply for refund of GST paid on such advances by filing FORM GST RFD-01 under the category "Refund of excess payment of tax"**

# Impact of Newly issued Circular No.135/05/2020 on GST refund

- 1. Change in manner of refund of tax paid on supplies OTHER THAN ZERO RATED SUPPLIES** - To avoid UNINTENDED ENCASHMENT OF CREDIT BALANCES now refund to be paid in cash and credit shall be calculated in the same proportion in which the cash and credit ledger has been debited for discharging the total tax liability for the relevant period for which application for refund has been filed.
- 2. Restriction on refund to the extent they are on GSTR 2A** - Refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Means the refund will not be allowed on the basis of copies of such invoices which were required to be uploaded.

# Impact of Newly issued Circular No.135/05/2020 on GST refund

## **3. NEW REQUIREMENT TO MENTION HSN/SAC IN ANNEXURE 'B' –**

The applicant is, in addition to details already prescribed, now required to mention HSN/SAC code which is mentioned on the inward invoices.

**IN CASES WHERE SUPPLIER IS NOT MANDATED TO MENTION HSN/SAC CODE ON INVOICE, THE APPLICANT NEED NOT MENTION HSN/SAC CODE IN RESPECT OF SUCH AN INWARD SUPPLY.**

**The same is done** to distinguish ITC on capital goods and/or input services out of total ITC for a relevant tax period since in view of the provisions relating to refund where refund of credit on Capital goods and/or services is not permissible in certain cases the same would help to identify the same.

# CASE STUDY

# ANALYSIS OF ELIGIBILITY OF GST REFUND ON ACCOUNT OF CANCELLATION/RETURN OF SUPPLY.

## Fact:

- ABC Private Limited has raised Tax invoice of Rs.1 crore to XYZ on 14<sup>th</sup> January 2020 for the services/goods and charges IGST @18%.
- The tax has been paid on the supply by utilising the credits.
- In the month of March 2020, XYZ cancel service contract/returns the goods.
- ABC issues the credit note u/sec 34 (2).
- On 14<sup>th</sup> March 2020 ABC raises Tax invoice of Rs.1 crore to PQR for the services/goods and charges CGST and SGST @18%.

**Assumptions: There is no more interstate supply and credits in future.**

# ANALYSIS OF ELIGIBILITY OF GST REFUND ON ACCOUNT OF CANCELLATION/RETURN OF SUPPLY.

## Query:

- Is M/s ABC eligible for GST refund or is he required to adjust his tax liability on account of cancellation/return of supply in his returns?
- Can M/s ABC adjust the tax paid under IGST or is he required to pay additional 18 lakh for CGST and SGST as well?
- Will there be any working capital blockage due to newly issued Circular No.135/05/2020?

# ANALYSIS OF ELIGIBILITY OF GST REFUND ON ACCOUNT OF CANCELLATION/RETURN OF SUPPLY.

## Query:

Is M/s ABC eligible for GST refund or is he required to adjust his tax liability on account of cancellation/return of supply in his returns?

## Reply:

Yes, M/s ABC is eligible for GST refund in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST RFD-01 as per circular no.137/07/2020 dated 13.04.2020 subject to provision of section 54 .

He could adjust his tax liability if the same is covered under the same head in the return subject to conditions of section 34 of the CGST Act and there is no need to file a separate refund claim.



# ANALYSIS OF ELIGIBILITY OF GST REFUND ON ACCOUNT OF CANCELLATION/RETURN OF SUPPLY.

## Query:

Can M/s ABC adjust the tax paid under IGST or is he required to pay additional 18 lakh for CGST and SGST as well?

## Reply:

No, M/s ABC cannot adjust the tax paid under IGST with tax liability under CGST and SGST.

**Yes**, ABC has to pay additional 18 lakh through cash in our case study and worse part is that the refund would be credited in the credit ledger to avoid UNINTENDED ENCASHMENT OF CREDIT BALANCES as per circular no **135/05/2020**.

# ANALYSIS OF ELIGIBILITY OF GST REFUND ON ACCOUNT OF CANCELLATION/RETURN OF SUPPLY.

## Query:

Will there be any working capital blockage due to newly issued Circular No.135/05/2020?

## Reply:

Yes, working capital would be blocked.

We have to find the solutions of Utilizing the credit lying under credit ledgers M/s ABC.

- **Hon'ble Supreme court decision in case of Mohd. Ekram Khan and Sons Vs CIT (2004) 6 SCC 1083 (S.C.)** - Issue of credit notes to the client also a form of payment. Hence there cannot be any question of **unjust enrichment**.
- **Hon'ble Supreme Court decision in case of Godfrey Phillips(I)Ltd.& Anr vs State Of U.P.& Ors on 20 January, 2005** - Incidence of taxation.
- **Hon'ble Supreme Court decision in case of Union of India Vs Solar Pesticide Pvt Ltd. [ 2000 (116) E.L.T. 401 (S.C.)]** – One should not pass on the tax incidence to another person directly or indirectly considering the principle of unjust enrichment.
- **Hon'ble Supreme Court decision in case of Mafatlal Industries Ltd vs Union of India 1997 (89) ELT 247 (S.C.)**. - Principle of unjust enrichment. i.e. One person cannot be doubly benefited i.e. on the one hand, collecting duty from buyer and on the other hand obtaining refund of such duty from the revenue.

# Certificate that Incidence of tax has not been passed

This is to certify that in respect of the refund amounting to Rs. \_\_\_\_\_ (in words) claimed by M/s \_\_\_\_\_ (Applicant's Name) GSTIN/ Temporary ID \_\_\_\_\_ for the tax period < --->, the incidence of tax and interest, has not been passed on to any other person. This certificate is based on the examination of the books of account and other relevant records and returns maintained/ furnished by the applicant.

Signature of the Chartered Accountant/Cost Accountant:

Name:

Membership Number:

Place:

Date:

UDIN:

**FOR MORE DETAILS ON  
GST REFUNDS – MUCH WIDER SCOPE THAN YOU THOUGHT**

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