



## Update on Indirect Tax:

# Instructions for procedure relating to Sanction, Post Audit and Review of GST Refund claims.

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Date: 28<sup>th</sup> June, 2022

### Introduction:

Goods and Services Tax (GST) is an Indirect Tax which is levied on the supply of goods and services. It is a single domestic Indirect Tax Law for the entire country. GST Law is still evolving & issues are still faced by trade, taxpayers, professionals as well as Authorities / Officers. It has ensured rationalization of the economy and reinforced mop-up, producing consistent convergence under the '**one-nation one tax**' idea.

In an attempt to ensure uniformity in the implementation of the provisions of the law across field formations, the council has recommended different measures to be followed by Refund Authorities / Officers for sanction, review and post audit of the Refund Claims.

In this reference, an Instruction vide No. 03 / 2022 dated 14<sup>th</sup> June, 2022 was issued with the twin purpose of ensuring uniformity in procedure by issuing the speaking order in all refund claims and enabling effective monitoring of sanction of refund claims in order to safeguard interest of revenue of the government.

### Sanction of Refund:

It has been mentioned in the Instructions that before taking the final decision with regards to refund claim, proper officer shall follow the principle of natural justice. The proper officer shall be required to verify the authenticity of the Refund in terms of documents, timelines for issuance of deficiency memo, timelines for sanction / rejection of refund in Form GST RFD - 06 and specifically review following details:

- The debit of refund claim amount from Electronic Credit Ledger;
- Filing of GST returns by the Taxpayers;
- **ITC on capital goods has not been included in calculation of Net ITC for refund of ITC in zero rated supplies;**
- Documents submitted by applicant in support of refund claims such as Invoices, Shipping Bills, Foreign Inward Remittances Certificate (FIRC)/ Bank Realization Certificate (BRC).
- In case of refund of tax paid on supplies regarded as deemed export, no ITC has been claimed by the recipient when refund is claimed by supplier.

Further, we would like to throw light on part 2 of the said Instructions playing an important role in

diverging the sanctions of the refund claims which is **Post - Audit and Review** to be followed by the Authorities only for refund claims amounting to **Rs. One Lakh or more.**

The post audit and review of the refund claims shall form the base for the Commissioner to take a view on whether an appeal to the appellate authority is required to be filed or not against the refund order passed by the adjudicating Authority. Following procedures shall be conducted by the Authorities:

- i. A post - audit Cell under a Deputy/Assistant Commissioner along with one / two Superintendents and Inspectors as required, may be created in Commissionerate Headquarters.
- ii. The review and post - audit officers shall have access to all documents/ statements on ACES - GST portal pertaining to the said refund claims as all the refund claims should be immediately transmitted online to the review module after issuance in Form GST RFD - 06.
- iii. The post - audit should be concluded within 3 months from the date of issue of order in Form GST RFD - 06.
- iv. The findings by the post - audit cell shall be communicated to the review branch within the said time period of 3 months.
- v. Thereafter, the review of the refund order on the basis of the findings of the post - audit cell shall be completed at least 30 days before the expiry of six months i.e. the time period allowed for filing appeal under Section 107 (2) of the CGST Act, 2017.

### Impact on Industry:

The said instruction have impact on the applications and procedures of the refund in following ways as under:

- The instruction lays down appropriate mechanism for issuance of refund orders by stating that **“Refund sanction or rejection order shall be Speaking order” which was not done under GST till date.** This would have positive impact and lead to more transparency in procedures relating to refund.

- The risk and severity of the refund claims has been increased because of insertion of one more layer of supervision within the department;
- In view of the insertion of the said procedure, **now the refund applications will be time consuming leading to verification of the documents and application at each point;**
- Exercising stringent control over refunds will lead to delay in sanctioning the refund claims;
- Appropriate scrutiny of refund application leads to control erroneous refunds to claimants.
- These instructions would act as guiding principles for assessee to ensure correctness, completeness of refund application.
- This will increase the litigation in view of difference to opinion between Adjudication officer and Audit Department.

### **Conclusion:**

Accordingly, on sanction of the refund claims to the applicant amounting to Rs. 1 Lakh or more, it shall be subjected to Post Audit which should be concluded within a period of 5 months from the issuance of the Refund order to take a view on whether or not an Appeal is required to be filed by the Commissioner against the refund order passed by the Adjudicating Officer.

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