

Agenda Item 3: Any other agenda item with the permission of the Chairperson

Agenda Item 3(i): Refund of provisionally accepted Input Tax Credit

In order to alleviate the problem of capital blockage faced by trade and industry due to the non-availability of the refund module on the common portal, the GST Council in the 22nd Meeting recommended that the applications / documents / forms pertaining to refund claims on account of zero-rated supplies shall be filed and processed manually till further orders.

2. Further, on the recommendations of the GST Council, the due dates for filing of details in **FORM GSTR-2** and the return in **FORM GSTR-3** have been postponed till further orders while the return filing frequency of the details in **FORM GSTR-1** is monthly for registered persons having aggregate turnover above Rs. 1.5 crores and quarterly for those having aggregate turnover upto Rs. 1.5 crores.

3. The report of the Committee on Exports set up by the GST Council dealt with the issue of delays in grant of refunds of IGST and input tax credit on goods and services used in exports. This was discussed in the 22nd meeting of the GST Council held on 6th October, 2017. Due to various reasons like non-availability of **FORM GSTR-1** for the month of August, 2017 and subsequent months till the cycle of filing **FORM GSTR-1, FORM GSTR-2, FORM GSTR-3** is completed for previous months and lack of readiness of refund module in GSTN, it was decided to process refunds manually till such time the system related issues were resolved.

4. Thus, in view of the above relaxations of the due dates for filing the details in **FORM GSTR-1** and **FORM GSTR-2** and the return in **FORM GSTR-3** together with manual processing of refunds, it was decided to grant refunds on the basis of details furnished in the return in **FORM GSTR-3B** which captures the details of tax liability and tax payment by the registered persons on a monthly basis. Accordingly, the Law Committee proposed issuance of a Circular which was issued by the GST Policy Wing, CBEC (Circular No. 17/17/2017-GST dated 15/12/2017 refers).

5. Whereas, section 54(6) of the CGST Act, 2017 reads as follows:

*(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, **excluding the amount of input tax credit provisionally accepted**, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.*

6. Doubts have been raised about granting refunds of provisional credit as it appears to be not in line with the provisions of section 54(6) of the CGST Act which states that refund on provisional basis should exclude the amount of input tax credit which has been provisionally accepted.

7. In this regard, it is sought to clarify that in light of the fact that the return in **FORM GSTR-3B** is being filed by the registered persons which also entails tax payment and since the due dates for filing the details in **FORM GSTR-2** and the return in **FORM GSTR-3** have been postponed till further orders, the registered person should be allowed refund of accumulated input tax credit in case of zero-rated supplies and inverted duty structure as well as IGST paid on export of goods and services or both though the matching of input tax credit has not taken place. This can be done in terms of provisions contained in section 148 of the CGST Act, 2017. It may be submitted that as per section

42 of the CGST Act, in case it is found that excess credit has been claimed by the recipient and the same is not corrected within the stipulated time, the said amount shall be added to the output tax liability of the recipient in his return along with interest. Further, as per sections 73 and 74 of the CGST Act, erroneous refund or wrongly availed or utilized input tax credit is liable to be recovered along with interest and penalty.

8. The GST Council is requested to approve the proposal, in exercise of the provisions contained in section 148 of the CGST Act, 2017, to clarify that registered persons would be allowed refund of accumulated input tax credit in case of zero-rated supplies and inverted duty structure as well as IGST paid on export of goods and services or both though the matching of input tax credit has not taken place.
