

SKKA IDT ALERT

2023-2024/22

Circular No. 197/09/2023 dated 17.07.2023 : Clarification on Refund Related Issues.

The GST Council, through its 50th meeting convened on 11th July 2023, has presented a myriad of recommendations, and subsequently issued multiple circulars. In this article, we will delve into the key clarifications provided in the circular regarding refund matters:

1. Restriction on Refund of accumulated Input Tax Credit under Section 54(3) :

In light of the insertion of Section 16(2) (aa) of the CGST Act, the refund of accumulated Input Tax Credit (ITC) will now be restricted to the extent of ***invoices auto-populating in Form GSTR 2B, instead of considering invoices from Form GSTR 2A***. This means that taxpayers seeking a refund of accumulated ITC should consider only those invoices that are reflected in Form GSTR 2B for the relevant period when calculating the eligible refund amount. The above change is being made in line with amendments in section 16(2)(aa) of the CGST Act and rule 36(4) of the CGST Rules.

This clarification shall apply to refund applications filed for the period January 2022 and subsequent periods. ***However, refund claims processed for tax periods from January 2022 onwards and already disposed of in accordance with existing guidelines, will not be reopened despite the new circular's clarification.***

2. Amendment/Change in the Undertaking to be submitted in RFD-01 :

Circular No. 125/44/2019-GST dated 18th November 2019 introduced the requirement of an undertaking in FORM RFD-01 that if the conditions of Section 16(2)(c) and section 42(2) of the CGST Act 2017 were not met for the refunded amount, the applicant must repay the amount of refund along with interest to the Government. However, section 42 of the CGST Act has been omitted w.e.f. 01.10.2022. The modified undertaking now only pertains to Section 16(2)(c) of the CGST Act. Accordingly, Annexure-A to the circular has been amended to the extent of removing –

- The references to Section 42 in the undertaking to be submitted in RFD-01,
- the requirement to upload GSTR-2A and self-certified copies of invoices not found in GSTR-2A wherever required as supporting documents.

In summary, the undertaking in FORM RFD-01 now relates solely to Section 16(2)(c) of the CGST Act.

3. Manner of calculation of Adjusted Total Turnover consequent to Explanation inserted in sub-rule (4) of Rule 89 vide Notification No. 14/2022- CT, dated 05.07.2022.

For calculating the "adjusted total turnover" under sub-rule (4) of rule 89 of CGST Rules, the value of zero-rated supply of goods or services is to be determined as per explanation inserted in the same sub-rule through **Notification No. 14/2022-Central Tax dated 05.07.2022**. As per this clarification, value of goods exported out of India for calculating adjusted total turnover shall be taken as **value of export goods being the FOB value declared in shipping bill or the value declared in the invoice, whichever is less.**

Going forward, exporters will benefit as it will increase the amount of refund. But the question regarding the claim of past refund on the higher amount of adjusted total turnover (resulting lower claim of refund) is still not clarified.

4. Clarification in respect of admissibility of refund in compliance of the provisions of sub-rule (1) of rule 96A:

In response to the concerns raised, it is hereby clarified that even if the **export of goods or realization of payment for export of services occurs beyond the specified time frames mentioned in sub-rule (1) of rule 96A**, the entitled exporters cannot be denied the benefit of zero-rated supplies.

Rule 96A binds a registered person to pay tax along with interest within a period of –

- a. **fifteen days after expiry of 3 months from date of invoice, if goods are not exported out of India; or**
- b. **fifteen days after expiry of 1 year from date of invoice for export of service if the payment of such services is not received.**

This circular clarifies that subsequent to payment of tax by a registered person if goods are exported or payment for export of services is realized, then exporters can claim a refund of the integrated tax previously paid on account of goods not being exported or payment not being realized for export of services. However, the devil lies in the details as it is important to note that no refund of the interest paid in compliance with sub-rule (1) of rule 96A will be granted.

Furthermore, the refund application should be filed under the category **"Excess payment of tax"**. But due to non-availability of the facility on the GST portal to file refund under the said category, the applicant may file the refund application under the category **"Any Other"** on the portal.

Our Comments-The aforementioned circular is expected to significantly mitigate unnecessary litigation. However, it falls short in addressing the denial of refund of interest, which has been collected without lawful authority. Additionally, a registered person before claiming refund of integrated tax on account of goods not being exported or payment for export of services not being realized, must look at the relevant date (as per explanation of section 54) that application should be made before expiry of 2 years from relevant date.

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