

Office of the
Commissioner of State Tax (GST),
8th floor, New Building,
GST Bhavan, Mazgaon,
Mumbai-400010.

TRADE CIRCULAR

To,

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No. JC/HQ-I/GST/Refund/2017-18

Mumbai, Date: 2nd June 2018

Trade Circular No. 17T of 2018

Subject : Clarifications on issues related to refund.

Ref. : (1) Circular No. 17/17/2017 dated 15th November 2017 issued by the Commissioner GST (Central Board of Indirect Taxes and Customs), New Delhi.
(2) Order of Distribution of cases No. 1/2017-GST/Maharashtra dated the 22nd November 2017.
(3) Circular No. 24/24/2017-GST dated 21st December 2017 issued by the Commissioner of GST (Central Board of Indirect Taxes and Customs), New Delhi.
(4) Trade circular No. 49T of 2017 dated 28th November 2017.
(5) Trade circular No. 52T of 2017 dated 11th December 2017.
(6) Circular No. 37/11/2018 dated 15th March 2018 issued by the Commissioner GST (Central Board of Indirect Taxes and Customs), New Delhi.

Sir/Gentlemen/Madam,

1. The Commissioner vide Trade Circular No. 49T of 2017 and 52T of 2017 cited at Ref. (4) and (5), respectively clarified various issues in relation to processing of claims for refund on account of Zero-rated supply of goods or services or both. These Trade Circulars are based on various Circular(s) issued by the Central Board of Indirect Tax and Customs (CBIC), New Delhi i.e. Circular No. 17/17/2017 – GST dated 15th November 2017 and Circular No. 24/24/2017 – GST dated 21st December 2017. In addition to aforesaid Circular(s) CBIC has also issued Circular cited at Ref. (6) above and clarified certain issues involving GST refund.
2. On this background, several representations have been received seeking further clarifications on issues relating to refund. In order to clarify these

issues and with a view to ensure uniformity in the implementation of the provisions of the GST Act, across the State, the undersigned, in exercise of its powers conferred by sub-section (1) of section 168 of the Maharashtra Goods and Services Tax Act, 2017 (hereinafter in this Trade Circular referred as “MGST Act”), hereby clarifies the issues raised as below:

3. **Non-availment of drawback:** The third proviso to sub-section (3) of section 54 of the MGST Act states that no refund of input tax credit shall be allowed in cases where the supplier of goods or services or both avails of drawback in respect of central tax.

3.1. This has been clarified in paragraph 8.0 of Circular No. 24/24/2017 – GST, dated 21st December 2017 cited at Ref.-(3) above. It may be noted that in the said circular reference has been made only to central tax, integrated tax, State / Union territory tax and not to customs duty leviable under the Customs Act, 1962.

3.2. Therefore, a supplier availing of drawback only with respect to basic customs duty shall be eligible for refund of unutilized input tax credit of central tax / State tax / Union territory tax / integrated tax / compensation cess under the said provision. It is further clarified that refund of eligible credit on account of State tax shall be available even if the supplier of goods or services or both has availed of drawback in respect of central tax.

4. **Amendment through Table 9 of GSTR-1:**

4.1. It has been reported that refund claims are not being processed on account of mis-matches between data contained in **FORM GSTR-1**, **FORM GSTR-3B** and shipping bills/bills of export. In this connection, it may be noted that the facility of filing of Table 9 in **FORM GSTR-1**, an amendment table which allows for amendments of invoices/ shipping bills details furnished in **FORM GSTR-1** for earlier tax period, is already available. If a taxpayer has committed an error while entering the details of an invoice / shipping bill / bill of export in Table 6A or Table 6B of **FORM GSTR-1**, he can rectify the same in Table 9 of **FORM GSTR-1**.

- 4.2. It is advised that while processing refund claims on account of zero rated supplies, information contained in Table 9 of **FORM GSTR-1** of the subsequent tax periods should be taken into cognizance, wherever applicable.
- 4.3. The Nodal Officers are also advised to refer to Circular No. 26/26/2017 – GST dated 29th December, 2017 issued by the CBIC, wherein the procedure for rectification of errors made while filing the returns in **FORM GSTR-3B** has been provided. Therefore, in case of discrepancies between the data furnished by the taxpayer in **FORM GSTR-3B** and **FORM GSTR-1**, the officer shall refer to the said Circular and process the refund application accordingly.

5. **Exports without LUT:**

- 5.1. Export of goods or services can be made without payment of integrated tax under the provisions of rule 96A of the Maharashtra Goods and Services Tax Rules, 2017 (hereinafter referred to as the “MGST Rules”). Under the said provisions, an exporter is required to furnish a bond or Letter of Undertaking (LUT) to the Nodal Officer before effecting zero rated supplies.
- 5.2. A detailed procedure for filing of LUT has already been specified vide Trade Circular No. 50T of 2017 dated the 7th December 2017. A facility for online submission of LUT at GSTN is also made available and same is explained vide Trade Circular No. 10T of 2018 dated the 28th February 2018. In view of this the tax payer is now not required to submit to the jurisdictional officer, the copy of the acknowledgement generated at GSTN for submission of LUT online. To know more please refer Circular No. 40/11/2018 dated the 6th April 2018 issued by the CBIC.
- 5.3. It has been brought to the notice of this office that in some cases, such zero rated supplies have been made before filing the LUT and refund claims for unutilized input tax credit have been filed.
- 5.4. In this regard, it is emphasized that the substantive benefits of zero rating may not be denied where it has been established that exports in terms of the relevant provisions have been made. The delay in furnishing of LUT in such cases may be condoned and the facility

for export under LUT may be allowed on *ex post facto* basis taking into account the facts and circumstances of each case.

6. Exports after specified period:

- 6.1. Rule 96A (1) of the MGST Rules provides that any registered person may export goods or services without payment of integrated tax after furnishing a LUT / bond and that he would be liable to pay the tax due along with the interest as applicable within a period of fifteen days after the expiry of three months or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the goods are not exported out of India. The time period in case of services is fifteen days after the expiry of one year or such further period as may be allowed by the Commissioner from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange.
- 6.2. It has been reported that the exporters have been asked to pay integrated tax where the goods have been exported but not within three months from the date of the issue of the invoice for export. In this regard, it is emphasized that exports have been zero rated under the Integrated Goods and Services Tax Act, 2017 (IGST Act) and as long as goods have actually been exported even after a period of three months, payment of integrated tax first and claiming refund at a subsequent date should not be insisted upon. In such cases, the said tax payer may submit a written request to this office which may consider granting extension of time limit for export as provided in the said sub-rule on *post facto* basis keeping in view the facts and circumstances of each case. The same principle should be followed in case of export of services.

7. Deficiency memo:

- 7.1. It may be noted that if the application for refund is complete in terms of sub-rule (2), (3) and (4) of rule 89 of the MGST Rules, an acknowledgement in **FORM GST RFD-02** should be issued. Rule 90 (3) of the MGST Rules provides for communication in **FORM**

GST RFD-03 (deficiency memo) where deficiencies are noticed. The said sub-rule also provides that once the deficiency memo has been issued, the claimant is required to file a fresh refund application after the rectification of the deficiencies.

- 7.2. In this connection, a clarification has been sought whether with respect to a refund claim, deficiency memo can be issued more than once. In this regard rule 90 of the MGST Rules may be referred to, wherein it has been clearly stated that once an applicant has been communicated the deficiencies in respect of a particular application, the applicant shall furnish a fresh refund application after complying with the deficiencies so communicated.
- 7.3. It is therefore, clarified that there can be only one deficiency memo for one refund application and once such a memo has been issued, the applicant is required to file a fresh refund application, manually in **FORM GST RFD-01A**. This fresh application would be accompanied with the original ARN, debit entry number generated originally and a hard copy of the refund application filed online earlier. It is further clarified that once an application has been submitted afresh, pursuant to a deficiency memo, the concerned refund processing officer will not serve another deficiency memo with respect to the application for the same period, unless the deficiencies pointed out in the original memo remain unrectified, either wholly or partly, or any other substantive deficiency is noticed subsequently.

8. Self-declaration for non-prosecution:

- 8.1. It is learnt that some Nodal Officers are asking for a self-declaration with every refund claim to the effect that the claimant has not been prosecuted.
- 8.2. The facility of export under LUT is available to all exporters in terms of notification No. 37/2017- State Tax dated 7th October 2017, except to those who have been prosecuted for any offence under the MGST Act or CGST Act or the IGST Act or any of the existing laws in force in a case where the amount of tax evaded exceeds two

hundred and fifty lakh rupees. Para 3.5 of the Trade Circular No. 50T of 2018 dated 7th December, 2017, mentions that a person intending to export under LUT is required to give a self-declaration at the time of submission of LUT that he has not been prosecuted. Persons who are not eligible to export under LUT are required to export under bond.

8.3. It is clarified that this requirement is already satisfied in case of exports under LUT and asking for self-declaration with every refund claim where the exports have been made under LUT is not warranted.

9. Refund of transitional credit:

9.1. Refund of unutilized input tax credit is allowed in two scenarios mentioned in sub-section (3) of section 54 of the MGST Act. These two scenarios are zero rated supplies made without payment of tax and inverted tax structure. In sub-rule (4) and (5) of rule 89 of the MGST Rules, the amount of refund under these scenarios is to be calculated using the formulae given in the said sub-rules.

9.2. In case of the zero rated supplies made without payment of tax the formulae use the phrase 'Net ITC' and defines the same as "input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both".

9.3. Whereas, in case of refund on account of inverted tax structure i.e. rate of inward supply of goods is higher than the outward supply of goods the formulae use the phrase 'Net ITC' and defines the same as "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". Thus so far as the refund on account of inverted duty structure is concerned the tax payer is entitled to claim the refund of input tax credit in respect of inputs as defined under section 2(59) of the MGST Act. In other words, the tax payer is not entitled to claim the refund of ITC under this category in respect of the services availed during the said period.

9.4. It is clarified that as the transitional credit pertains to duties and taxes paid under the existing laws viz., under Maharashtra Value Added Tax Act, 2002 or, as the case may be, Maharashtra Entry Tax Act, the same cannot be said to have been availed during the relevant period and thus, cannot be treated as part of 'Net ITC'.

10. Discrepancy between values of GST invoice and shipping bill/bill of export:

10.1. It has been brought to the notice of the that in certain cases, where the refund of unutilized input tax credit on account of export of goods is claimed and the value declared in the tax invoice is different from the export value declared in the corresponding shipping bill under the Customs Act, refund claims are not being processed. The matter has been examined and it is clarified that the zero rated supply of goods is effected under the provisions of the GST laws. An exporter, at the time of supply of goods declares that the goods are for export and the same is done under an invoice issued under rule 46 of the MGST Rules. The value recorded in the GST invoice should normally be the transaction value as determined under section 15 of the MGST Act read with the rules made thereunder. The same transaction value should normally be recorded in the corresponding shipping bill / bill of export.

10.2. During the processing of the refund claim, the value of the goods declared in the GST invoice and the value in the corresponding shipping bill / bill of export should be examined and the lower of the two values should be considered for the purpose of sanction of refund.

11. Refund of taxes paid under existing laws:

11.1. Sub-sections (3), (4) and (5) of section 142 of the MGST Act provide that refunds of tax paid under the existing law shall be disposed of in accordance with the provisions of the existing law (i.e. under MVAT Act, Entry Tax Act etc). It is observed that certain taxpayers have applied for such refund claims in **FORM GST RFD-01A** also.

In this regard, the concerned authorities are advised to reject such applications and pass a rejection order in **FORM GST PMT-03** and communicate the same on the common portal in **FORM GST RFD-01B**. The procedures laid down under the existing laws viz., MVAT Act read with above referred sub-sections of section 142 of the MGST Act shall be followed while processing such refund claims.

11.2. Furthermore, it has been brought to the notice that the refund processing authorities are rejecting or withholding while processing claims of refund filed under the existing laws. In this regard, attention is invited to sub-section (3) of section 142 of the MGST Act which provides that the amount of refund arising out of such claims shall be refunded in cash. Further, the first proviso to the said sub-section provides that where any claim for refund of the input tax credit is fully or partially rejected, the amount so rejected shall lapse and therefore, will not be transitioned into GST. Furthermore, it should be ensured that no refund of the amount claimed as excess credit under the MVAT Act in the last return i.e. June-2017 return or refund under Entry Tax Act is granted in case the said amount has been transitioned under GST. The concerned refund processing authorities are advised to process such refund applications accordingly.

12. Grant of refund of the amount less than Rs. 1000/-:

- 12.1. Sub-section (14) of the section 54 of the MGST Act provides that no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if the amount is less than thousand rupees. Therefore, in view of the aforesaid provisions, the tax payer is advised not to file the FORM-RFD-01A and claim the refund wherever such claim is less than Rs. 1000/.
- 12.2. The claim of refund of Rs. 1000/- either on account of accumulated ITC, IGST paid or of the excess in the electronic cash ledger is to be considered qua MGST/CGST/IGST/Cess. In case such claim is filed already then the refund processing officer need

not grant the refund of the said amount. The FORM-RFD-04 or RFD-06 in such cases shall not be issued. The applicant may be informed accordingly.

12.3. However, in case the refund under one or more of the aforesaid Act(s) is below Rs. 1000/- and refund claim under other Act(s) is Rs. 1000/- or more then only to such extent (i.e. where refund claim is less than Rs.1000/-) the refund claim under that particular Act, need not be processed. In other words the refund of Rs. 1000/- and above shall only be granted and sent for the further processing and disbursement through NEFT.

13. Filing frequency of Refunds:

13.1. Various representations have been made with regards to the period for which refund applications can be filed. Section 2(107) of the MGST Act defines the term “tax period” as the period for which the return is required to be furnished. The terms ‘Net ITC’ and ‘turnover of zero rated supply of goods/services’ are used in the context of the relevant period in rule 89(4) of MGST Rules. The phrase ‘relevant period’ has been defined in the said sub-rule as ‘the period for which the claim has been filed’.

13.2. In many scenarios, exports may not have been made in that period in which the inputs or input services were received and input tax credit has been availed. Similarly, there may be cases where exports may have been made in a period but no input tax credit has been availed in the said period. The above referred rule, taking into account such scenarios, defines relevant period in the context of the refund claim and does not link it to a tax period.

13.3. In this regard, it is hereby clarified that the exporter, at his option, may file refund claim for one calendar month / quarter or by clubbing successive calendar months / quarters. The calendar month(s) / quarter(s) for which refund claim has been filed, however, cannot spread across different financial years. The facility to this effect is being developed by the GSTN portal. Once this facility is ready the exporter may file refund applications accordingly.

14. BRC / FIRC for export of goods:

- 14.1. It is clarified that the realization of convertible foreign exchange is one of the conditions for export of services. In case of export of goods, realization of consideration is not a pre-condition. In rule 89 (2) of the MGST Rules, a statement containing the number and date of invoices and the relevant Bank Realisation Certificates (BRC) or Foreign Inward Remittance Certificates (FIRC) is required in case of export of services whereas, in case of export of goods, a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices is required to be submitted along with the claim for refund.
- 14.2. It is therefore clarified that insistence on proof of realization of export proceeds for processing of refund claims related to export of goods has not been envisaged in the law and should not be insisted upon.

15. Supplies to Merchant Exporters:

- 15.1. Notification No. 40/2017 – State Tax (Rate), dated 23rd October 2017 and notification No. 41/2017 – Integrated Tax (Rate) dated 23rd October 2017 (issued by the Board, CBIC) provide for supplies for exports at a concessional rate of 0.05% and 0.1% respectively, subject to certain conditions specified in the said notifications.
- 15.2. It is clarified that the benefit of supplies at concessional rate is subject to certain conditions and the said benefit is optional. The option may or may not be availed by the supplier and / or the recipient and the goods may be procured at the normal applicable tax rate.
- 15.3. It is also clarified that the exporter will be eligible to take credit of the tax @ 0.05% / 0.1% paid by him. The supplier who supplies goods at the concessional rate is also eligible for refund on account of inverted tax structure as per the provisions of clause (ii) of the first proviso to sub-section (3) of section 54 of the MGST

Act. It may also be noted that the exporter of such goods can export the goods only under LUT / bond and cannot export on payment of integrated tax. In this connection, notification No. 3/2018-State Tax, dated 24th January 2018 may please be referred.

16. Requirement of invoices for processing of claims for refund:

- 16.1. It has been brought to the notice that for processing of refund claims, copies of invoices and other additional information are being insisted upon by many Nodal Officers.
- 16.2. It was envisaged that only the specified statements would be required for processing of refund claims because the details of outward supplies and inward supplies would be available on the common portal which would be matched. Most of the other information like shipping bills details etc. would also be available on the ICEGATE. However, because of delays in operationalizing the requisite modules on the common portal, in many cases, suppliers' invoices on the basis of which the exporter is claiming refund may not be available on the system. For processing of refund claims of input tax credit, verifying the invoice details is quintessential. In a completely electronic environment, the information of the recipients' invoices would be dependent upon the suppliers' information, thus putting an in-built check-and-balance in the system. However, as the refund claims are being filed by the recipient in a semi-electronic environment and is completely based on the information provided by them, it is necessary that invoices are scrutinized.
- 16.3. A list of documents required for processing the various categories of refund claims on exports is provided in the Table below. Apart from the documents listed in the Table below, no other documents should be called for from the taxpayers, unless the same are not available with the officers electronically:

Table

Sr. No.	Type of Refund	Documents required to be submitted
1.	Export of Services with payment of tax (Refund of IGST paid on export of services)	<ul style="list-style-type: none"> ✓ Copy of FORM RFD-01A filed on common portal along with copy of ARN generated at common portal. ✓ Copy of Statement 2 of FORM RFD-01A ✓ Invoices w.r.t. input, input services and capital goods ✓ BRC/FIRC for export of services Undertaking / Declaration in FORM RFD-01A
2.	Export (goods or services) without payment of tax (Refund of accumulated ITC of IGST / CGST / SGST / Cess)	<ul style="list-style-type: none"> ✓ Copy of FORM RFD-01A filed on common portal along with copy of ARN generated at common portal. ✓ Copy of Statement 3A of FORM RFD-01A generated on common portal ✓ Copy of Statement 3 of FORM RFD-01A ✓ Invoices w.r.t. input and input services ✓ BRC/FIRC for export of services ✓ Undertaking / Declaration in FORM RFD-01A

- 16.4. These instructions shall apply to exports made on or after 1st July, 2017. It is also advised that refunds may not be withheld due to minor procedural lapses or non-substantive errors or omission.
17. This Trade Circular is clarificatory in nature and cannot be made use of for interpretation of provisions of law. If any member of trade has any doubt, he may refer the matter to this office for further clarification.

Yours faithfully,



(Rajiv Jalota)

Commissioner of State Tax (GST)
Maharashtra State, Mumbai.

Trade Circular No. 17 T of 2018

Copy to the Joint Commissioner of State Tax, (MAHAVIKAS) with a request to upload this Trade circular on MGSTD web-site.

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- (1) Officer on Special Duty, Finance Department, Mantralaya, Mumbai.
- (2) Under Secretary, Finance Department, Mantralaya, Mumbai.
- (3) Accounts Officer, Sales Tax Revenue Audit, Mumbai and Nagpur.



(Vilas Indalkar)

Additional Commissioner of State Tax
(VAT)-02, Maharashtra State, Mumbai.