भारत सरकार GOVERNMENT OF INDIA
वित्त मंत्रालय MINISTRY OF FINANCE
राजस्व विभाग DEPARTMENT OF REVENUE
केन्द्रीय अप्रत्यक्ष कर और सीमा शुल्क बोर्ड
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS
आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER
केन्द्रीय कर एवं केन्द्रीय उत्पाद शुल्क
CENTRAL TAX & CENTRAL EXCISE
कोच्चि,KOCHI
केन्द्रीय राजस्व भवन, CENTRAL REVENUE BUILDING
आई. एस. प्रेस रोड, कोच्चि, I.S. PRESS ROAD, KOCHI-682 018
E-mail: cexcochi@nic.in Fax: 0484-2390608 Phone: 0484-2390404

सीसं/C.No. IV/16/09/2017-Tech दिनांक /Date:२१.11.2018

Trade Facility No: 17 /2018 Central Tax

Subject: Clarification on refund related issues — regarding

Ref: Circular No. 59/33/2018-GST dated 4th September, 2018 [F. No. CBEC- 349/21/2016 -GST]

Kind attention is invited to Board's Circular No. 59/33/2018-GST dated 4th September, 2018 on the above mentioned subject. Various representations have been received seeking clarification on issues relating to refund. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues as detailed hereunder:

2. Submission of invoices for processing of claims of refund:

2.1 It was clarified vide Circular No. 37/11/2018-GST dated 15th March, 2018 that since

the refund claims were being filed in a semi-electronic environment and the processing was completely based on the information provided by the claimants, it becomes necessary that invoices are scrutinized. Accordingly, it was clarified that the invoices relating to inputs, input services and capital goods were to be submitted for processing of claims for refund of integrated tax where services are exported with payment of integrated tax; and invoices relating to inputs and input services were to be submitted for processing of claims for refund of input

tax credit where goods or services are exported without payment of integrated tax.

2.2. In this regard, trade and industry have represented that such requirement is

cumbersome and increases their compliance cost, especially where the number of invoices is large.

2.3. In view of the difficulties being faced by the claimants of refund, it has been decided

that the refund claim shall be accompanied by a print-out of **FORM GSTR-2A** of the claimant for the relevant period for which the refund is claimed. The proper officer shall rely upon **FORM GSTR-2A** as an evidence of the accountal of the supply by the corresponding supplier in relation to which the input tax credit has been availed by the claimant. It may be noted that there may be situations in which **FORM GSTR-2A** may not contain the details of all the invoices relating to the input tax credit availed, possibly because the supplier's **FORM GSTR-1** was delayed or not filed. In such situations, the proper officer may call for the hard copies of such invoices if he deems it necessary for the examination of the claim for refund. **It is emphasized that the proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are present in FORM GSTR-2A of the relevant period submitted by the claimant.**

2.4. The claimant shall also submit the details of the invoices on the basis of which input

tax credit had been availed during the relevant period for which the refund is being claimed, in the format enclosed as **Annexure-A** manually along with the application for refund claim in **FORM GST RFD-01A** and the Application Reference Number (ARN). The claimant shall also declare the eligibility or otherwise of the input tax credit availed against the invoices related to the claim period in the said Annexure for enabling the proper officer to determine the same.

3. <u>System validations in calculating refund amount</u>

3.1. Currently, in case of refund of unutilized input tax credit (ITC for short), the common

portal calculates the refundable amount as the least of the following amounts:

a) The maximum refund amount as per the formula in rule 89(4) or rule 89(5) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules") [formula is applied on the consolidated

amount of ITC, i.e. Central tax + State tax/Union Territory tax +Integrated tax + Cess(wherever applicable)];

b) The balance in the electronic credit ledger of the claimant at the end of the tax period for which the refund claim is being filed after the return for the said period has been filed; and

c) The balance in the electronic credit ledger of the claimant at the time of filing the refund application.

3.2. After calculating the least of the three amounts, as detailed above, the equivalent

amount is to be debited from the electronic credit ledger of the claimant in the following order:

a) Integrated tax, to the extent of balance available;

b) Central tax and State tax/Union Territory tax, equally to the extent of balance available and in the event of a shortfall in the balance available in a particular electronic credit ledger (say, Central tax), the differential amount is to be debited from the other electronic credit ledger (i.e., State tax/Union Territory tax, in this case).

3.3. The procedure described in para 3.2 above, however, is not presently available on the common portal. Till the time such facility is made available on the common portal, the taxpayers are advised to follow the order as explained above for all refund applications filed after the date of issue of this Circular. However, for applications already filed and pending with the tax authorities, where this order is not adhered to by the claimant, no adverse view may be taken by the tax authorities.

3.4. The above system validations are being clarified so that there is no ambiguity in

relation to the process through which an application in **FORM GST RFD-01A** is generated.

3.5. Further, it may be noted that the refund application can be filed only after the

electronic credit ledger has been debited in the manner specified in para 3.2 (read with para 3.3) above, and the ARN is generated on the common portal.

4. <u>Re-credit of electronic credit ledger in case of rejection of refund claim:</u>

4.1. In case of rejection of claim for refund of unutilized input tax credit on account of

ineligibility of the said credit under sub-sections (1),(2) or (5) of section 17 of the CGST Act, or under any other provision of the Act and rules made thereunder the proper officer shall order for the rejected amount to be re-credited to the electronic credit ledger of the claimant using **FORM GST RFD-01B.** For recovery of this amount, a demand notice shall have to be simultaneously issued to the claimant under section 73 or 74 of the CGST Act, as the case may be. In case the demand is confirmed by an order issued under sub-section (9) of section 73, or sub-section (9) of section 74 of the CGST Act, as the case may be, the said amount shall be added to the electronic liability register of the claimant through **FORM GST DRC-07.** Alternatively, the claimant can voluntarily pay this amount, along with interest and penalty, if applicable, before service of the demand notice, and intimate the same to the proper officer in **FORM GST DRC-03** in accordance with sub-section (5) of section 73 or sub-section (5) of section 74 of the CGST Act, as the case may be, read with sub-rule (2) of rule 142 of the CGST Rules. In such cases, the need for serving a demand notice will be obviated.

4.2. In case of rejection of claim for refund of unutilized input tax credit, on account of

any reason other than the eligibility of credit, the rejected amount shall be re-credited to the electronic credit ledger of the claimant using **FORM GST RFD-01B** only after the receipt of an undertaking from the claimant to the effect that he shall not file an appeal against the said rejection or in case he files an appeal, the same is finally decided against the claimant, as has been laid down in rule 93 of the CGST Rules.

4.3. Consider an example where against a refund claim of Rs.100, only Rs.80 is

sanctioned (Rs.15 is rejected on account of ineligible ITC and Rs.5 is rejected on account of any other reason). As described above, Rs.15 would be re-credited with simultaneous issue of notice under section 73 or 74 of the CGST Act for recovery of ineligible ITC. Rs.5 would be re-credited (through **FORM GST RFD-01B)** only after the receipt of an undertaking from the claimant to the effect that he shall not file an appeal or in case he files an appeal, the same is finally decided against the claimant.

5. Scope of rule 96(10) of the CGST Rules:

5.1 Rule 96(10) of the CGST Rules, as amended retrospectively by notification No. 39/2018-Central Tax, dated 04.09.2018 provides that registered persons, including importers, who are **directly purchasing/importing supplies** on which the benefit of reduced tax incidence or no tax incidence under certain specified

notifications has been availed, shall not be eligible for refund of integrated tax paid on export of goods or services. For example, an importer (X) who is importing goods under the benefit of Advance Authorization/EPCG, is **directly purchasing/importing supplies** on which the benefit of reduced/Nil incidence of tax under the specified notifications has been availed. In this case, the restriction under rule 96(10) of the CGST Rules is applicable to X. However, if X supplies the said goods, after importation, to a domestic buyer (Y), **on payment of full tax,** then Y can rightfully export these goods under payment of integrated tax and claim refund of the integrated tax so paid. However, in the said example if Y purchases these goods from X after availing the benefit of specified notifications, then Y also will not be eligible to claim refund of integrated tax paid on export of goods or services.

5.2 Overall, it is clarified that the restriction under rule 96(10) of the CGST Rules, as amended retrospectively by notification No. 39/2018-Central Tax, dated 04.09.2018, applies only to those purchasers/importers who are directly purchasing/importing supplies on which the benefit of certain notifications, as specified in the said sub-rule, has been availed.

6 Disbursal of refund amount after sanctioning by the proper officer:

6.1 A few cases have come to notice where a tax authority, after receiving a sanction

order from the counterpart tax authority (Centre or State), has refused to disburse the relevant sanctioned amount calling into question the validity of the sanction order on certain grounds. E.g. a tax officer of one administration has sanctioned, on a provisional basis, 90 per cent. of the amount claimed in a refund application for unutilized ITC on account of exports. On receipt of the provisional sanction order, the tax officer of the counterpart administration has observed that the provisional refund of input tax credit has been incorrectly sanctioned for ineligible input tax credit and has therefore, refused to disburse the tax amount pertaining to the same.

6.2 It is clarified that the remedy for correction of an incorrect or erroneous sanction order lies in filing an appeal against such order and not in withholding of the disbursement of the sanctioned amount. If any discrepancy is noticed by the disbursing authority, the same should be brought to the notice of the counterpart refund sanctioning authority, the concerned counterpart reviewing authority and the nodal officer, but the disbursal of the refund should not be withheld. It is hereby clarified that neither the State nor the Central tax authorities shall refuse to disburse the amount sanctioned by the counterpart tax authority on any grounds whatsoever, except under sub-section (11) of section 54 of the CGST Act. It is further clarified that any adjustment of the

amount sanctioned as refund against any outstanding demand against the claimant can be carried out by the refund disbursing authority if not already done by the refund sanctioning authority.

7 Status of refund claim after issuance of deficiency memo:

7.1 Rule 90(3) of the CGST Rules provides that where any deficiencies in the application for refund are noticed, the proper officer shall communicate the deficiencies to the claimant in **FORM GST RFD-03,** requiring him to file a fresh refund application after rectification of such deficiencies. Further, rule 93(1) of the CGST Rules provides that where any deficiencies have been communicated under rule 90(3), the amount debited under rule 89 (3) shall be re-credited to the electronic credit ledger. Therefore, the intent of the law is very clear that in case a deficiency memo in **FORM GST RFD-03** has been issued, the refund claim will have to be filed afresh.

7.2 It has been learnt that certain field formations are issuing show cause notices to the claimants in cases where the refund application is not re-submitted after the issuance of a deficiency memo. These show-cause-notices are being subsequently adjudicated and orders are being passed in **FORM GST RFD-04/06.** It is clarified that show-cause-notices are not required to be issued where deficiency memos have been issued. A refund application which is re-submitted after the issuance of a deficiency memo shall have to be treated as a fresh application. No order in **FORM GST RFD-04/06** can be issued in respect of an application against which a deficiency memo has been issued and which has not been resubmitted subsequently.

8 Treatment of refund applications where the amount claimed is less than rupees one thousand:

8.1 Sub-section (14) of section 54 of the CGST Act provides that no refund under sub-

section (5) or sub-section (6) of section 54 shall be paid to an applicant, if the amount is less than one thousand rupees.

8.2 In this regard, it is clarified that the limit of rupees one thousand shall be applied for

each tax head separately and not cumulatively. The limit would not apply in cases of refund of excess balance in the electronic cash ledger. All field formations are requested to reject claims of refund from the electronic credit ledger for less than one thousand rupees and re-credit such amount by issuing an order in **FORM GST RFD-01B.**

9. All the Trade Associations are requested to bring the contents of this Trade Notice to the attention of their members in particular and the trade in general.

[Encl: Annexure-A]

29.XI.18

K.R. Uday Bhaskar
Commissioner

To,

As per DL-I & II of Cochin Commissionerate

Copy Submitted to:

The Chief Commissioner's Office.

Trade Facility No: 17 /2018 Central Tax

Circualar No. 59/33/2018-GST

Annexure-A
Format for Statement of Invoices to be submitted with application for refund in FORM GST RFD-01A

s. No.	GSTIN of the supplier	Name of the Supplier	Invoice Details			Type	Central tax	State tax/Union Territory tax	Integrated tax	Cess	Eligible for ITC	Amount of eligible ITC
			Invoice No.	Date	Value	Inputs/ input services/ capital goods					Yes/No /Partially	
1	2	3	4	5	6	7	8	9	10	11	12	13